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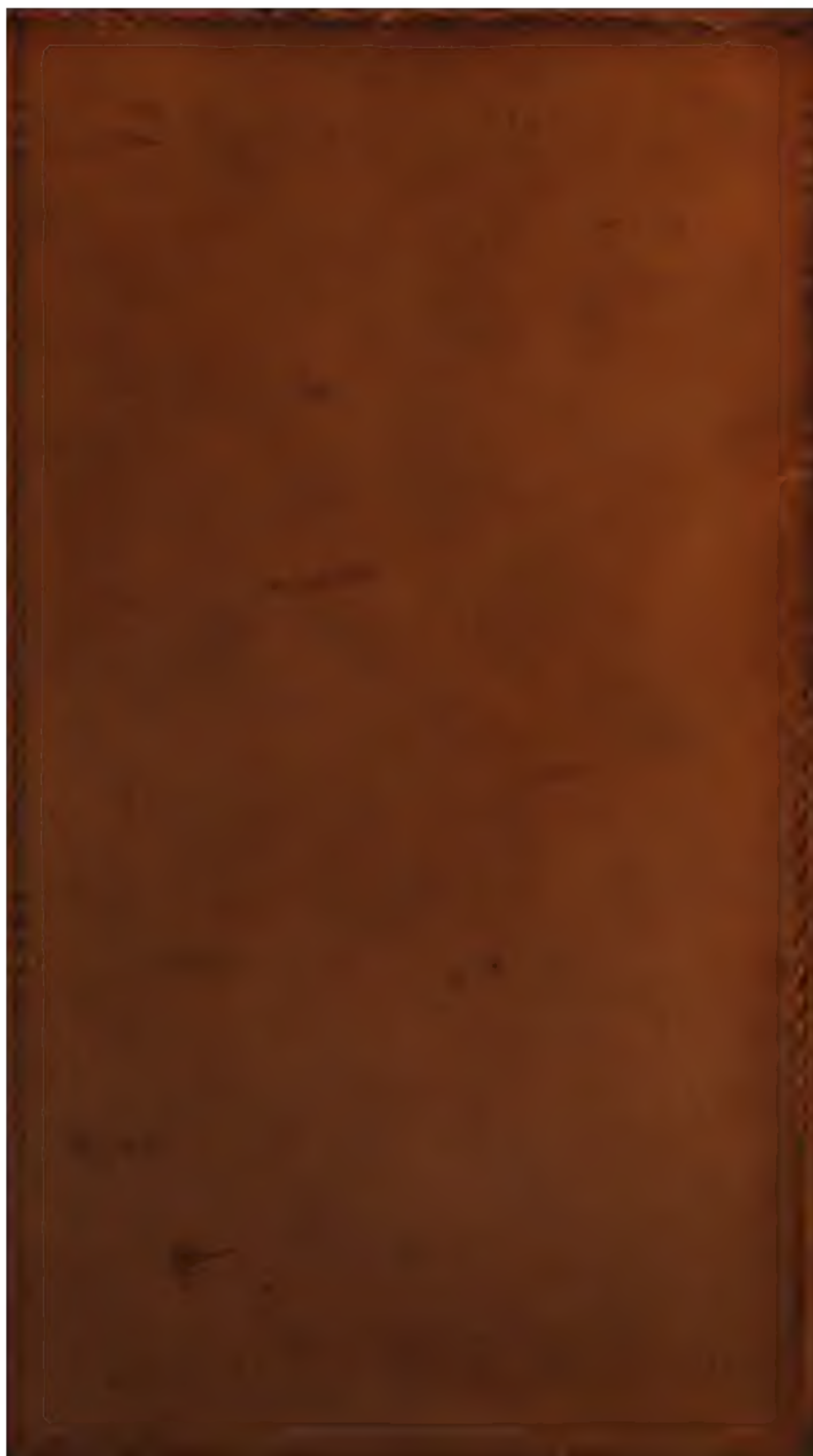
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FORMS
OF
PRACTICAL PROCEEDINGS,
IN THE
Courts of Queen's Bench, Common Pleas,
AND
Exchequer of Pleas.

BY THOMAS CHITTY, ESQ.

OF THE INNER TEMPLE.

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FORMS.

ARTICLED CLERKS, ATTORNIES, &c.

1. *Articles of Clerkship to an Attorney and Solicitor.*

ARTICLES of Agreement indented, made and concluded upon the — day of —, in the year of our Lord 18—, Between *A. A. (the attorney)* of —, gentleman, one of the attornies of her majesty's courts of Queen's Bench, Common Pleas and Exchequer, at Westminster, and a solicitor in the high court of Chancery, of the one part, and *C. C. (a)* of —, and *D. C. (the clerk)* [son of the said *C. C.*] of the other part: WITNESS, that the said *D. C.* of his own free will [and by and with the consent and approbation of the said *C. C.*,] hath placed and bound himself, and by these presents doth place and bind himself, clerk to the said *A. A.* to serve him from the day of the date hereof, for and during and until the full end and term of five [or "three years," if the clerk have taken the degree of bachelor of arts or of law in the Universities of Oxford, Cambridge, Dublin, London or Durham; see 1 Chit. Ar. Pr. 33,] years from hence next ensuing and fully to be complete and ended: AND the said *C. C.* doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said *A. A.*, his executors, administrators and assigns, that the said *D. C.* shall and will well and faithfully and diligently serve the said *A. A.* as his clerk, in the profession of an attorney at law and solicitor in Chancery, from the day of the date hereof, for and during and unto the full end of the said term of five [or "three"] years: And that the said *D. C.* shall not, at any time during such term, cancel, obliterate, spoil, destroy, waste, embezzle, spend or make away with, any of the books, papers, writings, monies, stamps, chattels or other property of the said *A. A.*, his executors, administrators or assigns, or any of his clients or employers, which shall be deposited in his hands, or entrusted to his custody or possession, or which shall come or be entrusted to the care, custody or possession of the said *D. C.*: And that, in case the said *D. C.* shall act contrary to the last-mentioned covenant, or if he the said *A. A.*, his executors, administrators or assigns, shall sustain or suffer any loss, damage or prejudice, by the misbehaviour, neglect, or improper conduct of the said *D. C.*, the said *C. C.*, his executors or administrators, shall indemnify the said *A. A.* and make good and reimburse the said *A. A.* the amount or value thereof: And further, that the said *D. C.* shall and will, from time to time and at all times during the said term, keep the secrets of the

(a) If the party to be bound be of age, a third person is seldom made party to the indenture, and if so, this form should be altered accordingly.

said *A. A.*, and readily and cheerfully obey and execute his lawful and reasonable commands ; and shall not depart or absent himself from the service or employ of the said *A. A.* at any time during the said term, without his consent first obtained ; but shall from time to time and at all times, during the said term, conduct himself with all due diligence, honesty and propriety : And that the said *C. C.*, his executors and administrators, shall and will, from time to time and at all times, during the said term, at his and their proper costs and charges, find and provide the said *D. C.* with all and all manner of necessary and becoming apparel. [*This last preceding covenant might be extended to other things ; as for the support and maintenance of the clerk, &c.*] AND the said *D. C.* doth hereby for himself covenant, promise and agree to and with the said *A. A.*, his executors, administrators and assigns, that he the said *D. C.* shall and will truly, honestly and diligently serve the said *A. A.* at all times for and during the said term, as a faithful clerk ought to do, in all things whatsoever, in the manner above specified. IN CONSIDERATION whereof and of the sum of £——, by the said *C. C.* to the said *A. A.* in hand well and truly paid, at or before the sealing and delivery of these presents, (the receipt whereof the said *A. A.* doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release and discharge the said *C. C.*, his executors and administrators, and every of them, for ever, by these presents,) [*This acknowledgment and the recital would preclude the attorney from recovering the amount at law, though the premium was not in fact paid,*] the said *A. A.* for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said *C. C.*, his executors and administrators, by these presents, that the said *A. A.* shall and will accept and take the said *D. C.* as his clerk, and shall and will find and provide him during the said term with board and lodging : [*This last preceding covenant, if not stipulated for, as is mostly the case among London attorneys, should be omitted :*] And also that the said *A. A.* shall and will, by the best ways and means he may or can, and to the utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said *D. C.* in the said practice or profession of an attorney at law and solicitor in Chancery, which he the said *A. A.* now doth, or shall, at any time hereafter during the said term, use or practise ; [*Other covenants may, if within the object of the clerkship, be here inserted. Sometimes, if the clerk has been some time acting in the profession, the attorney covenants to pay him a salary ;*] and also shall and will, at the expiration of the said term, use his best means and endeavours, at the request, costs and charges of the said *C. C.* and *D. C.*, or either of them, to cause and procure him the said *D. C.* to be admitted and sworn an attorney of her majesty's said courts of Q. B., C. P. and Exch. or either of them, or any other of her said majesty's courts of law or equity, provided the said *D. C.* shall have well, faithfully and diligently served his said intended clerkship. IN WITNESS whereof the parties aforesaid have hereunto set their hands and seals the day and year first above-mentioned, at——.

Witness, &c. }
W. W. }
F. F. }

A. A. (L.S.)
C. C. (L.S.)
D. C. (L.S.)

[See 1 Chit. Ar. Pr. 20, 21.]

2. *Affidavit of the Execution of the Articles.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

W. W. of —, gentleman, [one of the attesting witnesses to the articles, if more than one, but which there need not be,] maketh oath and saith, that, by articles of agreement dated the — day of —, A. D. —, and made between A. A. of —, gentleman, one of the attornies of her majesty's courts of Q. B. [or "C. P." or "Exch. of Pleas"] at Westminster, [and a solicitor in the high court of Chancery,] of the one part, and C. C. of —, and D. C. of — (son of the said C. C.) of the other part, the said D. C., for the considerations therein mentioned, did put, place and bind himself clerk to the said A. A., to serve him in the profession of an attorney at law [and solicitor in Chancery] from the day of the date of the said articles, for the term of five [or "three"] years thence next ensuing and fully to be complete and ended; and which said articles were in due form of law executed by the said A. A., C. C. and D. C., in the presence of this deponent [and of one F. F. of —], and that the names of W. W. [and F. F.], set and subscribed to the said articles as witnesses to the due execution thereof, are the proper handwriting of this deponent and of the said F. F.

W. W.

Sworn [&c. (a).]

[See 1 Chit. Ar. Pr. 21.]

3. *The like, where the Clerk has taken a Degree at an University.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

D. C. of —, gentleman, maketh oath and saith, that he hath taken the degree of bachelor of arts [or "law"] in the university of Oxford [or "Cambridge," or "Dublin," or "London," or "Durham"]; and that he did take such degree within six [or, if bachelor of law, "eight"] years next after the day when he was first matriculated in the said university: And this deponent further saith, that, by articles of agreement bearing date the — day of —, A. D. —, and made within [four] years next after the day when this deponent had first taken such degree, between [&c. conclude as in last, stating the term of service to be three, instead of five years, according to the fact. In strictness, perhaps, that part of the affidavit which states the execution of the articles should be made by one of the attesting witnesses.]

Sworn [&c. (a).]

D. C.

[See 1 Chit. Ar. Pr. 20.]

4. *Notice of Intention to apply for Examination (b).*

Notice is hereby given, that D. C. of — now serving [or "who has lately served"] under articles of clerkship to A. A. of —, attorney at law, [if he also served under persons to whom he has been assigned, state it thus,—and also under articles of assignment from the said A. A. to E. F., attorney at law, and also under articles of assignment from the said E. F. to, &c.] intends to apply next — term for examination, in order to be admitted as an attorney of one or more of her majesty's superior courts, and that the place of residence of the said D. C. for the twelve months

(a) See Index, title "Jurat."

(b) As to the questions, &c., see 1 Chit. Ar. Pr. 27.

preceding the date of this notice, has been at — [or, "that the said D. C., for the twelve months preceding the date of this notice, hath been in the service of the said A. A., at —, under the said articles."] Dated this — day of —, 1839.

[See 1 Chit. Ar. Pr. 24.]

5. Notice of Intention to apply for Admission.

Notice is hereby given, that D. C. of —, now serving [or "who has lately served"] under articles of clerkship to A. A. of —, attorney at law, [and if he has also served under some other person or persons to whom he has been assigned, you must state it thus—"and also under articles of assignment from the said A. A. to E. F., attorney at law, and also under articles of assignment from the said E. F. to," &c.—so stating all the assignments,] intends to apply next — term to be admitted an attorney of her majesty's court of Q. B. [or "C. P." or "Exch. of Pleas"]: And notice is hereby further given, that the place of abode of the said D. C., for the last preceding twelve months, has been at — [or, "and that the said D. C., for the last preceding twelve months, hath been in the service of the said A. A."](a). Dated this — day of —, 1839.

D. C.

[See 1 Chit. Ar. Pr. 29.]

6. Affidavit by the Clerk, of Service under the Articles, and of Notice of Intention to apply for Admission in Q. B.

In the Queen's Bench.

D. C. of —, gentleman, maketh oath and saith, that he hath really and truly served and been employed by A. A. of —, gentleman, as his clerk, in the practice of an attorney [and solicitor] during the whole of the term of five [or "three"] years, pursuant to the articles hereunto annexed (*annex them*). And this deponent further saith, [sometimes the rest of this affidavit is made by a third person,] that he did on the — day of — (b) last, [or "instant"] deliver at the office of —, esq., one of the masters of this honourable court, situate in —, a written notice stating his name and place of abode, as also his place of abode for the then last preceding twelve months, as also the name and place of abode of the said A. A. (c).^{*} And that he did also, previous to last — term, cause a written notice, stating his name and place of abode, and also his place of residence [or "service"] for the then last preceding twelve months, and also the name and place of abode of the said A. A. to be affixed in the Queen's Bench Office, according to the rule of court in that behalf, and that such notice remained there the whole of that term, and was not pulled down or defaced, according to the best of the knowledge and belief of this deponent. And that he did also, previous to the same term, cause his name and place of abode, as also the name and place of abode of the said A. A., to be entered in the books kept for that purpose, at the chambers of each of the judges of this honourable court: And that such notices and entry in the books above-mentioned respectively purported that it was the in-

(a) See R. H. 6 W. 4, 1 Chit. Ar. Pr. 29, 30.

(b) This must be three days at the least before the commencement of the term next preceding that in which the party proposes himself to be admitted.

R. H. 6 W. 4, 1 Chit. Ar. Pr. 29; *Re Prangley*, 4 Ad. & Ell. 781; 6 N. & M. 421, S. C.

(c) If there have been an assignment of the articles, insert in the affidavit the name of the assignee.

tention of this deponent to apply the then next — term to be admitted an attorney of this honourable court.

Sworn [&c. (a).]

D. C.

[See 1 Chit. Ar. Pr. 30, 31.]

7. *The like, in C. P.*

In the Common Pleas.

D. C. of —, gentleman, maketh oath and saith, that [*proceed as in the preceding form to the *, and then thus:*] And that he did, previous to last — term, cause notices in writing, stating the names and places of abode of this deponent and the said A. A. respectively, and also stating the place of residence [*or "service"*] of this deponent for the then last preceding twelve months, to be affixed at the chambers of each of the judges of this honourable court, in conspicuous places, and likewise in the Common Pleas Office; and all which said several notices purported that this deponent intended to apply, as of the then next — term, to be admitted an attorney of this honourable court.

Sworn [&c. (a).]

D. C.

[See 1 Chit. Ar. Pr. 30.]

8. *The like, in either Court, where the Articles have been assigned (b).*

In the Q. B. [*or "C. P."*]

D. C. of —, gentleman, maketh oath and saith, that he really and truly served and was employed by A. A. (*the first master*), of —, gentleman, as his clerk, in the practice of an attorney [*and solicitor*], from the day of the date of certain articles of clerkship, made between the said A. A. [*and C. C.*] and this deponent, bearing date the — day of [&c.], until the — day of —, in the year 18—, being the full term of — years, — months, and — days. And this deponent further saith, that he was duly assigned, by certain articles of assignment, for the remainder of the said term of five years, unto E. E. of —, then and still being one of the attornies of her majesty's courts of Q. B., C. P., and Exch. of Pleas at Westminster, and a solicitor in the high court of Chancery; and that he hath really and truly served and been employed by the said E. E. as his clerk, in the practice of an attorney and solicitor, from the day of the date of the said articles of assignment, made between the said A. A., [*C. C.*], this deponent, and E. E., bearing date the — day of [&c.], until the — day of —, in the year 18—, being the full term of — years, — months, and — days, pursuant to the said articles of assignment hereunto annexed (*annex them*). And this deponent further saith, that he hath really and truly served and been employed as clerk, for the full term of five years, pursuant to the said articles of clerkship and assignment above-mentioned: And this deponent further saith [*&c. conclude with stating the fixing of the notice of the intention for admission, as in the two preceding forms, mutatis mutandis.*]

Sworn [&c. (a).]

D. C.

[See 1 Chit. Ar. Pr. 30, 31.]

9. *The like, in Q. B., where the Clerk served Part of his Time as a Pupil to a Barrister or Special Pleader.*

In the Q. B.

D. C. of —, gentleman, maketh oath and saith, that in pursuance of

(a) See Index, title "*Jurat.*"

(b) See the form, Tidd's Supp. 257.

the articles of clerkship hereto annexed, bearing date the — day of —, 18—, he hath really and truly served, and was employed by A. A. of —, in the county of —, one of the attornies of her majesty's court of Q. B. at Westminster, as his clerk, in the practice of an attorney and solicitor, from the day of the date of the said articles to the — day of —, 18—, inclusive, being a period of — years, — months, and — days: And further saith, that, by virtue and under the authority of an act of parliament made and passed in the session of parliament held in the first and second years of the reign of his late majesty King George the Fourth, intituled, "An Act to amend the several Acts for the Regulation of Attornies," he, this deponent, actually and really was and continued with, and was actually and really employed by — of —, in the county of —, esq. as his pupil, from the — day of —, 18—, to the — day of —, 18—, inclusive, being a period of —, and that the said — during the term of such last-mentioned service, was a person *bonâ fide* practising as a barrister, [or, "a certificated special pleader in *England*;"] and which said services in the whole amount to the full term of five years. And this deponent further saith, that he did on the — day of — last deliver at the office, &c. [conclude as in No. 6.]

10. *Affidavit by the Barrister or Special Pleader in such Case.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

T. T. of —, esq. maketh oath and saith, that — of — actually and really was and continued with, and was actually and really employed by, this deponent, as his pupil, from the — day of —, 18—, to the — day of —, 18—, inclusive: And this deponent further saith, that during the whole of such period, he, this deponent, was a practising barrister in *England*, [or, "was actually and *bonâ fide* practising as a certificated special pleader in *England*," as the case may be.] T. T.

Sworn [&c.(a).]

11. *Affidavit of Payment of Stamp Duty on Articles.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

D. C. of —, gentleman, maketh oath and saith, that the stamp duty of £120, imposed on articles of clerkship by an act of parliament made and passed in the 55th year of his late majesty King George the Third's reign, was paid on certain articles of clerkship, bearing date the — day of —, in the year 18—, and made between A. A. of —, gentleman, of the one part, [and C. C. of —,] and this deponent D. C. [son of the said C. C.] of the other part, as appears by the stamp affixed on the said articles. And this deponent further saith, that the said articles were duly executed by the respective parties therein mentioned, on the day of the date thereof, and were duly enrolled on the — day of — then next, as appears by the certificate of — (*the officer*) [or, "the proper officer,"] indorsed thereon. D. C.

Sworn [&c.(a).]

[See 1 Chit. Ar. Pr. 31.]

12. *The like where the Articles have been assigned.*

[Proceed as in the preceding form, to the end, and then as follows:—
And this deponent further saith, that the duty of £1:15s. was paid on

(a) See Index, title "Jurat."

certain articles of assignment, bearing date the — day of —, in the year 18—, and made between A. A. of —, gentleman, of the first part, [C. C. of — and] this deponent of the second part, and E. E. of —, gentleman, of the third part, as appears by the stamp affixed on the said assignment. And this deponent further saith, that the said assignment was duly executed by the respective parties therein mentioned on the — day of —, 18—, [the date], and was duly enrolled on the — day of — then next, as appears by the certificate of — (the officer) [or, "the proper officer,"] indorsed thereon.

Sworn [&c. (a).]

D. C.

[See 1 Chit. Ar. Pr. 31.]

13. *The like, where the Party has been admitted in Chancery, or in C. P. or Exch.*

[Proceed as in the form, *supra*, No. 11, to the end, and then thus:—]—
And this deponent further saith, that he was on the — day of — 18—, admitted a solicitor of her majesty's high court of Chancery, [or "an attorney of her majesty's court of Common Pleas," or, "Exchequer of Pleas,"] and that he still continues to be such solicitor, [or, "attorney."]

Sworn, [&c. (a).]

14. *Certificate of Service.*

I do hereby certify that the within-named — hath well and truly served me for the term of five years, pursuant to these articles; and that he is a respectable person, and fit and proper to be admitted an attorney of her majesty's court of Queen's Bench [or "C. P." or "Exch. of Pleas,"] at Westminster. Dated the — day of —, A.D. 1839.

[See 1 Chit. Ar. Pr. 31.]

15. *Fiat for Admission.*

Let E. D. of —, gentleman, be sworn, admitted, and enrolled an attorney of her majesty's court of Queen's Bench [or "C. P." or "Exch. of Pleas,"] at Westminster. Dated the — day of —, A.D. 1839.

[Judge's or Baron's signature.]

[See 1 Chit. Ar. Pr. 31.]

16. *Oath, or Affirmation, on Admission.*

I D. C. do swear [or, if a quaker, "do affirm"] that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability. So help me God.

[See 1 Chit. Ar. Pr. 31.]

17. *Affidavit to obtain a Baron's Fiat for an Attorney's Admission to practise in the Exchequer of Pleas (b), when he has been already admitted in the Queen's Bench and Common Pleas.*

In the Exchequer of Pleas.

D. C. of —, gentleman, maketh oath and saith, that the stamp

(a) See Index, title "Jurat."

(b) See the 11 Geo. 4 and 1 Will. 4, c. 70, s. 10; 1 Chit. Ar. Pr. 33.

duty of £120 was paid on certain articles of clerkship bearing date the — day of —, A.D. —, and made between A. A. of —, of the one part, this deponent of the second part, [and C. C. of the third part]; which said articles were executed on the day and year aforesaid, and duly enrolled in the court of —, on —, as appears by the certificate of the proper officer: And this deponent further saith, that he was duly admitted an attorney of her majesty's court of Q. B. on the — day of —, A.D. —, [and was also duly admitted an attorney of her majesty's court of C. P. on the — day of —; (*if the case*)] and still continues on the roll of attornies of the said courts.

Sworn [&c. (a).]

D. C.

[See 1 Chit. Ar. Pr. 33.]

18. *Fiat of Baron thereon.*

Let D. C. of —, gentleman, duly appointed an attorney of her majesty's courts of Q. B. [and C. P.], be admitted, sworn, and enrolled an attorney of her majesty's court of Exchequer at Westminster.

Dated the — day of —, 18—.

To the Master of the Court
of Exchequer.

[Baron's signature.]

••• *This fiat and the above affidavits are left with one of the Masters or his Clerk, after which the Attorney should attend the sitting of the court at Westminster, for the purpose of being sworn: when having been sworn, and having inscribed his name on the roll kept in court for that purpose, he becomes an admitted attorney of the court of Exchequer, and entitled to a certificate of his admission.*

[See 1 Chit. Ar. Pr. 33.]

19. *Form of Admission thereon.*

In the Exch. of Pleas.

— term, in the — year of the reign of Victoria.

It appearing unto this court that A. A. of —, gentleman, is duly qualified to act as an attorney of her majesty's court of Exchequer at Westminster, and he having this day taken in open court the oaths of allegiance and supremacy, and also taken and subscribed the oath appointed to be taken by attornies by an act of parliament made and passed in the second year of the reign of his late majesty King George the Second, intituled, "An Act for the better Regulation of Attornies and Solicitors;" this court doth hereby admit him an attorney of the said court of Exchequer, and doth order his name to be enrolled by the proper officer of the said court, pursuant to the directions of the said act. Dated the — day of —, A.D. 18—.

Enrolled the same day,

T. DAX.

By the Barons,

ROSE.

[See 1 Chit. Ar. Pr. 33.]

20. *Notice of Intention to apply to be Re-admitted.*

Notice is hereby given that D. C. of —, late an attorney of her majesty's court of Q. B. [or "C. P." or "Exch. of Pleas,"] intends to apply on the last day of next — term to be re-admitted an attorney of

(a) See Index, title "Jurat."

the said court of Q. B. [or "C. P." or "Exch." (a)]. Dated the — day of — 1839.

[See 1 Chit. Ar. Pr. 38.]

21. *Affidavit by Attorney, who had ceased to practise, to be Re-admitted without Payment of Arrears of Stamp Duty (b).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. A. of —, gentleman, maketh oath and saith, that he this deponent was duly admitted an attorney of this honourable court in — term, in the year 18—, and hath from that time up to the month of December, in the year 18—, continued duly to take out his annual certificate, authorizing him this deponent to practise as an attorney, when this deponent ceased to renew the last of such annual certificates, on account of his having [here state the reason for his having ceased to practise, see 1 Chit. Ar. Pr. 38, which, in the case upon which this form was prepared, was as follows:] become bound in a certain bond as a surety for a relation, who afterwards failed and became insolvent, and this deponent was sued thereupon, and a judgment was obtained against him for £1000 and upwards for debt and costs. And this deponent further saith, that he, being unable to pay the same, was in —, A.D. —, taken in execution, by virtue of her majesty's writ of capias ad satisfaciendum, and lodged in the gaol of —, where he remained for about three months, since which time the said judgment, and all costs and charges in respect thereof, have been fully paid and satisfied. And this deponent further saith, that owing to his embarrassed circumstances aforesaid, and not on account of any malpractice or improper conduct, or any charge or imputation of his having been guilty of the same, this deponent discontinued and neglected to take out his certificate, as is annually required, to enable him to practise as an attorney aforesaid, whereby it has become necessary that he shall be re-admitted as an attorney of the same court before he can be duly qualified and eligible to practise as an attorney therein. And this deponent further saith, that, during all the time he acted as an attorney, his practice and conduct were fair, just, and honourable, and that he hath not at any time being guilty or accused to have been guilty of any misconduct whatever, rendering him unfit or unworthy to be re-admitted and enabled to practise as an attorney of this honourable court. And this deponent further saith, that since he was so discharged out of custody as aforesaid, he has been engaged in collecting his debts and settling his affairs, and that he this deponent hath not been engaged in any business, occupation, or employment rendering him unfit to practise as an attorney, nor is there any action depending against him this deponent." [In another form it was thus: "on account of his then and afterwards labouring under a dangerous illness, which prevented him from pursuing or practising his said profession of an attorney, and not from any desire to defraud her majesty's revenue with respect to the stamp duties on such certificates, nor on account of any threat, fear, or apprehension of any application or motion being made to this honourable court or any other court, against this deponent as such attorney as aforesaid."] And this deponent fur-

(a) It is the common practice to add the place of abode of the applicant for the last preceding twelve months in this notice, as in that for an original admission, but this seems unnecessary, the rule which requires it not apply-

ing to re-admission. See 1 Chit. Ar. Pr. 38 and 29.

(b) Affidavits for re-admission under other circumstances may easily be framed from this precedent.

ther saith, that from the time when the last certificate he so obtained as aforesaid expired, down to the present time, he this deponent hath not directly or indirectly practised in his own name or in the name of any other person, as such attorney as aforesaid, for his own emolument or otherwise; nor hath he incurred any penalty whatsoever, by reason of his so practising in his own name or in the name of any other person as such attorney as aforesaid; nor hath he, during the said time, been employed, concerned, or engaged, either as principal or otherwise, in any other profession or business, [or if he have been so employed, state how, thus: "otherwise than and except as clerk to C. C. of —, a respectable attorney at law, whom this deponent served as such clerk from — to —, at a salary of £—— per annum," or as the case may be.] And this deponent further saith, that his place of abode during the year now last past was at —.

Sworn [&c. (a).]

A. A.

[See 1 Chit. Ar. Pr. 38.]

22. Affidavit on Application for Re-admission, of the Notices of intention to apply, and of the Filing of the above Affidavit with the Masters, and of the Delivering it to the Clerk of the Chief Justice of Q. B. (b).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. of — maketh oath and saith, that on the — day of — last, being previous to the commencement of this present — term, he caused to be affixed on the outside of the Court of Queen's Bench [or "C. P." or "Exch."], at Westminster Hall, and in the Queen's Bench [or "C. P." or "Exch."] Office, on such places as public notices are usually affixed, and also caused to be entered in the books kept for that purpose at the chambers of each of the judges of this honourable court [or in C. P. or Exch. "the book kept for that purpose at the chambers of the judges of this honourable court"] notices in writing stating the name and place of abode of this deponent, and that this deponent intended to apply in this present — term to be re-admitted an attorney of this honourable court: that to the best of this deponent's knowledge and belief, such notices have remained and continued so affixed and entered and undefaced during the whole of this present — term: that on the said — day of — last this deponent caused the usual affidavit required by the court in that behalf, a copy whereof is hereunto annexed, to be filed at the office of the masters of this honourable court, and also caused a copy of such affidavit to be left with the clerk of the lord chief justice of the Court of Queen's Bench (c): that this deponent did, previous to the said first day of this present — term, serve the solicitor for the commissioners of her majesty's stamp duties with a notice in writing, stating the name and place of abode of this deponent, and that this deponent intended to apply in this present — term to be re-admitted an attorney of this honourable court, by delivering such notice to, and leaving the same with a clerk of the said solicitor at the Stamp Office in Somerset House (d).

Sworn, [&c. (a).]

(a) See Index, title "Jurat."

(b) The rule of H. T. 6 Will. 4, 1 Chit. Ar. Pr. 39, requires this.

(c) See as to the last allegation, R. H. 6 Will. 4.

(d) This is absolutely requisite, see 3 Dowl. 319, 371; 1 Chit. Ar. Pr. 38.

23. *Rule thereon for the Re-admission (a).*

On —, in — term, — Vict.

Ex parte } Upon reading the affidavits of A. A. [or "the affidavits of
A. A. gent. } A. A. and W. W."] it is ordered, that the said A. A. be re-
admitted an attorney of this court on payment of a penalty of — and
taking out a certificate for the present year. Upon the motion of Mr.
—.

By the Court.

24. *Affidavit by Attorney to be Re-admitted, where his Agent had omitted to take out Certificate.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. A. of —, gentleman, and C. C. of —, clerk to D. D. gentleman, severally make oath and say; and first this deponent A. A. for himself saith, that he was duly admitted an attorney of this honourable court in — term, in the year 18—, and duly obtained his annual certificates, authorizing him to practise as such attorney, until the year 18—. And this deponent A. A. further saith, that the said D. D. was his agent from the year 18—, to the year 18—, during which time the said D. D. had general directions from this deponent to take out and procure this deponent's certificate every year, as the same should be requisite to enable this deponent to continue his practice as such attorney as aforesaid. And this deponent A. A. further saith, that he hath lately been informed by the said D. D., and verily believes, that the said D. D. inadvertently omitted to take out or procure this deponent's certificate for the year 18—; but this deponent saith, that he had no notice whatever of his said last-mentioned certificate not having been regularly taken out, before his receiving notice thereof from the said D. D. And this deponent C. C. for himself saith, that he did, on the — day of — last, serve a true copy of the notice hereunto annexed [annex it] on the solicitor for her majesty's stamp duties, by delivering the same to, and leaving it with a clerk of the said solicitor, in the said solicitor's office, at Somerset House (b). And this deponent further saith, his place of abode continually during the year now last past was at —.

Sworn [&c. (c).]

A. A.

[See 1 Chit. Ar. Pr. 39.]

25. *Retainer of an Attorney by Plaintiff to sue (d).*

I A. B. of —, hereby retain Mr. A. A. to commence and prosecute an action against — for the recovery of my claims upon him. Dated the — day of —, 1839.

Witness W. W.

A. B.

[See 1 Chit. Ar. Pr. 50.]

(a) See 1 Chit. Ar. Pr. 39; see form, 1 Chit. Rep. 101, 102; 2 B. & Ald. 314.

(b) This is absolutely requisite; 3 Dowl. 319, 371; 1 Chit. Ar. Pr. 37.

(c) See Index, title "Jurat."

(d) Previous to the 5 Geo. 4, c. 41, it was usual and necessary to file a memorandum of the attorney's war-

rant to sue or defend, a form of which is given by the 25 Geo. 3, c. 80, sch. 2. But since the former act, the practice is unnecessary, and has been discontinued. It is recommended however that in all cases there should be a written retainer. See 1 Chit. Ar. Pr. 50.

26. *The like, by Defendant to defend, &c. (a)*

Between { A. B. Plaintiff,
and
C. D. Defendant.

I C. D. of —, the above-named defendant, do hereby retain and employ Mr. A. A. as my attorney to defend the above action (*or as the case may be.*) Dated this — day of —, 1839. C. D.

Witness W. W.

27. *Summons to change Attorney.*

B. } Let Mr. P. A. the (plaintiff's) attorney, or his agent, attend me
v. } at my chambers in Rolls Garden, to morrow at — o'clock, to
D. } show cause why Mr. C. A. should not be appointed attorney for
the [plaintiff] in this cause, in his stead. Dated the — day of —, 1839.
[Judge's signature.]

28. *Order thereon.*

B. } I order that Mr. C. A. be appointed attorney for the [plaintiff]
v. } in this cause, in the stead of Mr. P. A. [Terms, such as the payment
D. } of the former attorney's bill, may be imposed.] Dated the —
day of —, 1839.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 55.]

29. *Affidavit by Attorney to have himself struck off the Roll.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. A. of —, gentleman, one of the attornies of this honourable court, maketh oath and saith, that he was duly admitted an attorney of this honourable court in — term, 18—; and that he is now desirous to have his name struck off the rolls of attornies of this court, [for the purpose of his being called to the bar by the honourable society of —, (*or as the case may be:*)] And this deponent further saith, that no application or other proceeding is now pending against him as such attorney in this honourable court or elsewhere, nor doth he expect or apprehend that any application will be made, had, or commenced against him, as such attorney as aforesaid.

Sworn [&c. (b).]

A. A.

30. *Rule of Court thereon.*

On — in — term, — Vict.

In the matter of } Upon reading the affidavit of A. A. it is ordered
A. A. one, &c. } that the said A. A. of — be struck off the roll of
attornies of this court, at his own request, upon payment of all such fees as are due to the masters or any of their clerks. Upon the motion of Mr. —.

By the Court.

[See 1 Chit. Ar. Pr. 55.]

(a) See note (d) preceding page.

(b) See Index, title "Jurat."

31. *Summons to obtain Judge's Order for Delivery of Bill of Costs (a).*

B. } Let Mr. A. A. the [late] attorney of [the plaintiff or A. B.] or
 v. } his agent, attend me at my chambers in Rolls Garden on —
 D. } next, at — of the clock in the forenoon [or "afternoon"] to show
 cause why, &c. [here set forth the object of the summons, which may corre-
 spond with the following order.] Dated the — day of —, 1839.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 75.]

32. *Order thereon.*

B. } I order that Mr. A. A. [late] attorney for the [plaintiff] shall
 v. } within — days deliver to the plaintiff, [or "Mr. P. A. his now
 D. } attorney,"] a bill signed, of his charges, fees and disbursements in
 this and all other causes and matters wherein he has been concerned for
 the [plaintiff.] Dated the — day of —, 1839.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 76.]

33. *Summons to obtain Judge's Order for Taxation of Bill of Costs.*

B. } Let the plaintiff or his agent attend me at my chambers in Rolls
 v. } Garden, on — next, at — of the clock in the — noon, to
 D. } show cause why his bill of charges, fees and disbursements deli-
 vered to the defendant, for the recovery whereof this action is brought,
 should not be referred to one of the masters to be taxed, and why the said
 plaintiff should not upon the taxation give credit for all sums of money
 by him received from or on account of the said defendant; and why upon
 payment of what (if any thing) may appear due thereon, together with
 the costs of this action, likewise to be taxed and paid, all further proceed-
 ings should not be stayed. Dated the — day of —, 1839.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 79.]

34. *Order for same, where the Bill has been already delivered.*

B. } I order that Mr. A. A.'s bill of charges, fees, and disbursements
 v. } in this and other causes and matters delivered to the [plaintiff] be
 D. } referred to one of the masters to be taxed; the [plaintiff] having
 undertaken to pay what shall appear due on such taxation: And I further
 order, that the said Mr. A. A. shall give credit for all sums of money
 (if any) by him received from or on account of the said [plaintiff], and
 refund what (if any thing) he hath been overpaid; and that upon pay-
 ment of what (if any thing) shall appear due, or refunding by the said
 Mr. A. A., as the case may be, the said Mr. A. A. do deliver up all deeds,
 books, papers, and writings, in his possession, custody or power, belong-
 ing to the plaintiff. Dated the — day of —, 1839.

[Judge's signature.]

(a) This order may, according to *Clarkson v. Parker*, 7 Dowl. 87, be made, though the bill be not taxable.

35. Undertaking to pay Attorney's Bill on Taration.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

B. } I the undersigned *A. B.* do hereby undertake and agree to pay
 v. } *A. A.* of —, gentleman, my [late] attorney all such sums of
 D. } money as shall happen or appear to be due and owing to him, on
 the taxation of his bill of costs, delivered to me on or about the — day
 of —, 18—, amounting to the sum of £—. Dated the — day of
 —, 1839.

Witness, *W. W.*

A. B.

[See 1 Chit. Ar. Pr. 79.]

36. Memorandum thereon.

On —, the — day of —, 1839. This is the undertaking mentioned and referred to in and by the affidavit hereunto annexed.

37. Affidavit of Signature of same.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

B. } *W. W.* of —, gentleman, maketh oath and saith, that he was
 v. } present and did see the above-named plaintiff *A. B.*, in the annexed
 D. } undertaking named, write and subscribe his name thereto; and
 that the name *A. B.* thereto set and subscribed is of the proper hand-
 writing of the said *A. B.*

W. W.

Sworn [&c. (a).]

38. Writ of Privilege for an Attorney.

[See a form of writ to discharge an attorney from office of collector of taxes, Tidd's Forms, 15. See a form of writ of privilege for an officer of the Exchequer, *Exp. Thompson*, 2 M. & W. 647.]

(a) See Index, title "Jurat."

BOOK I.

PART I.

MAIN PROCEEDINGS IN THE ACTION.

CHAPTER I.

PROCEEDINGS TO COMPEL APPEARANCE BY WRIT OF SUMMONS WHERE DEFENDANT CAN BE SERVED WITH IT.

1. *Præcipe for the Writ of Summons.*

Middlesex [*the county &c. in which the writ is to be issued:*] Writ of summons for *A. B.* against *C. D.* of —, in the county of —, in an action on promises, [*or "of debt," as the form of action is.*]

P. A. attorney, [*or if in person "A. B. in person,"*]
the — day of —, 1839.

[*See 1 Chit. Ar. Pr. 112.*]

2. *The Writ of Summons.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to *C. D.* (*a*) of —, in the county of — (*b*), greeting: We command you that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Queen's Bench [*or "C. P." or "Exch. of Pleas,"*] (*c*) in an action on promises, [*or "of debt" &c. as the case may be,*] (*d*) at the suit of *A. B.* (*e*) And take notice, that, in default of your so doing, the said *A. B.* may cause an appearance to be entered for you, and proceed therein to judgment and execution. Witness, (*name of the chief justice, or in the Exchequer, the name of the chief baron,*) at Westminster, the — day of — (*day of*

(*a*) As to the statement of the defendant's name, see 1 Chit. Ar. Pr. 103, 104; and as to describing all the defendants, see *ib.* 106.

(*b*) As to the description of defendant's residence, see 1 Chit. Ar. Pr. 106.

(*c*) As to the necessity of stating the court correctly, see *Mayhew v.*

Hoadley, 6 Dowl. 629.

(*d*) As to the statement of the form of action, see 1 Chit. Ar. Pr. 106.

(*e*) As to the statement of the plaintiff's name, and the describing him in a representative character when suing thereon, see 1 Chit. Ar. Pr. 105, 106.

issuing the writ) in the — year of our reign [or “in the year of our Lord —”] (a).

N. B.—This writ is to be served within four calendar months from the date thereof, including the day of such date, and not afterwards (b).

The following indorsements must be made on the writ (c):] “This writ was issued by P. A. (plaintiff’s attorney’s name in full) of — (place of his abode in full; also if sued out as agent for an attorney in the country, here say ‘as agent for A. A. of —,’) attorney for the said A. A.” [Or if sued out by the plaintiff in person, “This writ was issued in person by the plaintiff within named, who resides at —,” mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff’s residence, if any such there be.]

If the action be for a debt, you must also make the following indorsement:]—“The plaintiff claims £— for debt and £— for costs, and if the amount thereof be paid to the plaintiff or his attorney within four days from the service hereof, further proceedings will be stayed” (c).

After the service fill up the following indorsement:]—“This writ was served by me X. Y. on C. D. on —, the — day of —, 1839.”

3. *Præcipe for Alias or Pluries Summons.*

[*The præcipe for an alias or pluries summons is the same as for a writ of summons, as ante, 15, except that you state it to be for an “alias writ of summons,” or “pluries writ of summons,” as the case may be.*]

4. *Alias or Pluries Summons into the same County as the first Writ (d).*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to C. D. of —, in the county of —, greeting: We command you, as before [or if a pluries, “as often”] we have commanded you, that [&c. proceed as in a writ of summons, as ante, 15.]

5. *Alias or Pluries Summons into a different County (e).*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to C. D. of —, in the county of —, late of —, in the county of —, [the original county] greeting: We command you as before [or if a pluries, “as often,”] we have commanded you, that [&c. proceed as in the writ of summons, as ante, 15.]

6. *Affidavit of Service of Writ of Summons.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

Between A. B. plaintiff and C. D. defendant.

C. C. clerk to P. A. of —, gentleman, attorney for the above-named plaintiff, maketh oath and saith, that he did on — the — day of — instant [or “last”] personally serve Mr. C. D., the above-named defend-

(a) As to the date and teste, see 1 Chit. Ar. Pr. 108.

(b) As to this memorandum, see 1 Chit. Ar. Pr. 103.

(c) See as to these indorsements, 1 Chit. Ar. Pr. 109.

(d) See 1 Chit. Ar. Pr. 117. The 2 Will. 4, c. 39, sched., prescribes this form.

(e) See 1 Chit. Prac. 117. The rule M. T. 3 Will. 4, prescribes this form.

ant, with a true copy of a writ of summons, which appeared to this deponent to be, and which he verily believes to have been, regularly issued out of and under the seal of this honourable court, at the suit of the above-named plaintiff, against the above-named defendant, and dated the — day of —, A. D. 1839, and to which said copy a memorandum was subscribed, and due indorsements made thereon, pursuant to the statute and the rules of Court in that case made and provided: And this deponent further saith, that he did on the — day of — last [or “instant”] being within three days after such service of the said writ, indorse on such writ the day of the week and month of such service, being the day and year first aforesaid, according to the statute in that case made and provided.

Sworn [&c. (a).]

C. C.

[See 1 Chit. Ar. Pr. 122.]

7. *Memorandum for and Entry of Appearance (b).*

A. B. plaintiff agst. C. D. } The defendant C. D. appears in person [or
[or
agst. C. D. and another, } “D. A. attorney for C. D. appears for him,”
or } or “P. A. attorney for the plaintiff, appears
agst. C. D. and others.] } for the defendant,”] according to the statute.
Entered the — day of —, 1839.
[See 1 Chit. Ar. Pr. 121.]

8. *Demand on an Attorney for him to state whether the Writ was issued by him.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

A. B. plaintiff against C. D. defendant.

Sir,

A writ of summons, dated the — day of — last [or “instant”], has been issued against the above-mentioned defendant in this cause, and on which writ is indorsed a statement that the same was issued by you as the above-named plaintiff’s attorney. This is to require and demand of you to declare to me forthwith whether such writ was issued by you or with your authority or privity. Dated the — day of —, 1839.

Yours, &c.

To Mr. P. A.

D. A. defendant’s attorney [or “agent.”]

[See 1 Chit. Ar. Pr. 51.]

(a) See Index, title “Jurat.”

prescribes this form. It must be strictly

(b) The statute 2 Will. 4, c. 39,

followed, 1 Chit. Ar. Pr. 118.

CHAPTER II.

PROCEEDINGS TO COMPEL APPEARANCE BY WRIT OF SUMMONS AND
DISTRINGAS, WHERE DEFENDANT CANNOT BE SERVED WITH THE
SUMMONS.

1. *Præcipe for the Writ of Summons.*

[Same as ante, 15.]

2. *Writ of Summons.*

[Same as the forms, ante, 15, 16. See 1 Chit. Ar. Pr. 125.]

3. *Affidavit of the Attempts to serve the Summons, in order to obtain
Distringas.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. C. clerk to P. A. of —, gentleman, attorney for the above-named plaintiff, maketh oath and saith, that on or about the — day of — last, this deponent, as clerk to the said P. A., caused to be sued out of this honourable court a writ of summons at the suit of the above-named plaintiff against the above-named defendant, dated the — day of —, A. D. —, and a true copy whereof is hereunto annexed [*annex it, or say "a true copy whereof is as follows," and then copy it.*] And this deponent further saith, that he has used all the means in his power, and all possible diligence to serve the said defendant personally with a copy of the said writ of summons, and that for the purpose of such service he called and applied at the dwelling-house and place of residence of the said defendant [*alter this if not so, saying "as this deponent has been informed and verily believes, from the circumstances of"—showing why you believe it to be his residence,*] on the — day of — instant [or "last,"] and again on the — day of — instant [or "last,"] and also again on the — day of — instant [or "last,"] and on the first and second of those occasions this deponent applied for and inquired after the said defendant of the wife [or "daughter," or "servant," or "persons who appeared to be of the family and servants"] of the defendant, [*if you can name the persons do so,*] and whom this deponent informed of the nature of his business, and his wanting to serve the said defendant with a copy of the said writ; but on neither of the said three occasions, or at any other time after the issuing of the said writ, was this deponent able to meet with the said defendant. And this deponent further saith, that he this deponent was told by the wife [or "daughter," &c.] of the said defendant, on the said several respective days, that he the said defendant was from home and could not be seen [*here state the answers given on the several occasions according to the fact*]. And this deponent further saith, that on the first of those occasions he told the wife [or "daughter," or "servant," &c.] of the said defendant that he would call again for the same purpose, and appointed to see the said defendant on the said —

day of — instant [or “last,”] and on the second of those occasions this deponent told the wife [or “daughter,” or “servant” &c.] of the said defendant, that he would call again for the same purpose, and appointed to see the said defendant on the said — day of — instant [or “last.”] And this deponent further saith, that on the last of those occasions this deponent left a copy of the said writ of summons with the said defendant's wife [or “daughter,” or “servant” &c.] for the said defendant, and told her to give it to him. And this deponent further saith, that, for the reasons aforesaid, he verily believes the said defendant kept and still keeps out of the way, to avoid being served with the said writ of summons; and that the said defendant hath not appeared to the said writ of summons [or “had not appeared to the said writ of summons on or before the — day of — instant (or ‘last,’) on which day this deponent searched in the proper office of this honourable court, for the purpose of ascertaining whether the said defendant had appeared to the said writ, and this deponent verily believes that he hath not hitherto appeared thereto] (a) and that he cannot be compelled to do so without some more efficacious process than the said writ of summons.

Sworn [&c. (b).]

C. C.

[For the requisites of this Affidavit, see 1 Chit. Ar. Pr. 126, 127.]

4. Rule of Court thereon.

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

—, the — day of —, in — term, in the — year of the reign of Queen Victoria.

B. } Upon reading the affidavit of C. C. it is ordered, that a writ of
v. } distringas do issue, directed to the sheriff of —, [or as the case may
D. } be,] to compel an appearance by or on behalf of the defendant, [or
if the rule be for the purpose of proceeding to outlawry, say, “for the purpose of proceeding to outlaw the defendant”] pursuant to the statute in that case made and provided. On the motion of Mr. —.

By the Court.

5. Judge's Order for drawing up Rule, in Vacation.

B. } Upon reading the affidavit of C. C., I do order that one of the
v. } Masters do draw up a rule that a writ of distringas do issue, directed
D. } to the sheriff of —, [or as the case may be,] to compel an appearance by or on behalf of the said defendant, [or if the rule be for the purpose of proceeding to outlawry, say, “for the purpose of proceeding to outlaw the defendant,”] pursuant to the statute in that case made and provided. Dated the — day of —, 1839.

[Judge's signature.]

6. *Præcipe* for Writ of Distringas.

— [the county to sheriff of which the distringas is directed.] Writ

(a) It is no objection to the motion for a distringas, that the search has been made four days before, if the time for appearance has elapsed, and

the affidavit be otherwise sufficient; *Waugh v. Fry*, E. 1839, 3 Jurist, 388.

(b) See Index, title “Jurat.”

of distringas for *A. B.* against *C. D.* returnable on — in an action on promises [*or as the action is.*]

P. A. attorney, —, 1839.

[See 1 *Chit. Ar. Pr.* 128.]

7. *Writ of Distringas.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of — (*a*), greeting: We command you that you omit not (*b*) by reason of any liberty in your bailiwick, but that you enter the same and distrain upon the goods and chattels of *C. D.* for the sum of forty shillings, in order to compel his appearance in our court of Q. B. [*or "C. P." or "Exch. of Pleas,"*] to answer *A. B.* in a plea of trespass on the case (*c*) [*or "debt," or as the case may be,*] and how you shall execute this our writ you make known to us in our said court on the — day of — now next ensuing. Witness (*name of chief justice, or in Exchequer, of chief baron,*) at Westminster, the — day of —, in the — year of our reign.

(*a*) This must be the sheriff or returning officer who is to have the execution of the writ. See 1 *Chit. Ar. Pr.* 129.

In Middlesex, although two individuals act as sheriff, yet in law they constitute but one sheriff, and the writ must be directed accordingly "To the sheriff of Middlesex;" though perhaps a direction in the plural number would not invalidate the writ.

In each of the following places there are two sheriffs, viz.—the cities of Bristol, Chester, Coventry, Gloucester, Lincoln, London, Norwich and York, and the town of Nottingham. In the first eight of these cities the writ should be directed "To the sheriffs of the city of —." In the town of Nottingham the direction is "To the sheriffs of the town and county of Nottingham;" though, perhaps, a direction in the singular number would not invalidate the writ.

The following is the direction of the writ in other places:—"To the sheriff of the city of Canterbury," "To the sheriff of the city of Exeter," "To the sheriff of the city of Litchfield and the county of the same city," "To the sheriff of the city of Worcester," "To the sheriff of the town and county of Kingston-upon-Hull," "To the sheriff of the town and county of Newcastle-upon-Tyne," "To the sheriff of the town and county of Poole," "To the sheriff of the town and county of

Southampton," "To the sheriff of the town and county of Carmarthen," "To the sheriff of the town and county of Haverfordwest."

To the county palatine of Lancaster or the county palatine of Durham writs are directed as in the form, *post*, 21.

To the county of Chester, the writ is now directed to the sheriff.

To the cinque ports, the writ is directed thus:—"To the constable of Dover Castle."

In the Isle of Ely, the writ is directed "To the sheriff of Cambridgeshire."

In the borough of Southwark, the writ is directed "To the sheriff of Surrey."

To a corporate town of exclusive jurisdiction, where there are no sheriffs, the writ must be directed to the corporation by the corporate name, as thus: "To the mayor and bailiffs of Berwick-upon-Tweed." See 1 *Chit. Ar. Pr.* 129.

A writ to be executed in the city of Oxford is nevertheless to be directed to the sheriff of the county.

To the coroners of a county, &c. the writ is directed thus: "To the coroners of our county of —," or "of our city of —." See 1 *Chit. Ar. Pr.* Book 1, Part 2, Ch. 1, s. 7.

(*b*) As to this *non-omittas*, see *id.*

(*c*) Sic in 2 Will. 4, c. 39, sched.

The following Notice must be subscribed thereto.

In the Court of (a) Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Mr. C. D.

Take notice, that I have this day distrained upon your goods and chattels in the sum of forty shillings, in consequence of your not having appeared in the said court to answer to the said A. B. according to the exigency of a writ of summons bearing teste on the — day of —; and that in default of your appearance to the present writ within eight days inclusive after the return hereof, the said A. B. will cause an appearance to be entered for you, and proceed thereon to judgment and execution [or if you purpose proceeding to outlawry, "will cause proceedings to be taken to outlaw you."]

[If the action be for the recovery of a debt, indorse the writ also with the indorsement of debt and costs, as ante, 16.]

[See 1 Chit. Ar. Pr. 128.]

8. Writ of Distringas into a County Palatine.

Victoria [&c. as above,] to the chancellor of our county palatine of Lancaster [or "Durham"] (b), or his deputy there, greeting. We command you, that by our writ, under the seal of our said county palatine, to be duly made and directed to the sheriff of our said county palatine, you command the said sheriff that he omit not by reason of any liberty in his bailiwick, but that he enter the same and distrain upon the goods and chattels of C. D. for the sum of forty shillings, in order to compel his appearance in our Court of Q. B. [or "C. P." or "Exch. of Pleas,"] to answer A. B. in a plea of trespass on the case (c) [or "debt," or as the case may be,] and how he shall have executed that our writ he make known to us in our said court, on the — day of — now next ensuing. Witness (name of chief justice, or, in Exchequer, of chief baron,) at Westminster, the — day of —, in the — year of our reign.

The following Notice must be subscribed to this Writ.

In the Court of Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Mr. C. D.

Take notice [&c. proceed as in the above notice, and indorse it as above directed in the preceding form, No. 7.]

9. Mandate to the Sheriff of a County Palatine, in pursuance of the above Writ.

Victoria [&c. as above.] To the sheriff of Lancashire [or "Durham"] (b), greeting. We command you that you omit not by reason of any liberty in your bailiwick, [&c. as in the above writ of distringas to the teste, commanding the sheriff in the second person to do what is required by the writ.] Witness ourself at Lancaster [or "Durham"], the — day of —, in the — year of our reign. [Subscribe the notice to it, and indorse it as directed in the preceding form, No. 8.]

(a) Sic in 2 Will. 4, c. 39, sched.

(b) The palatine jurisdiction of the Bishop of Durham was transferred to the crown (as a separate franchise and

royalty), by 6 & 7 Will. 4, c. 19. Writs should therefore now be directed as above, and not to the bishop.

(c) Sic in rule of M. T. 3 Will. 4.

10. *Sheriff's Warrant on Distringas.*

To B. B. and J. B. my bailiffs.

— to wit. Distrain C. D. by all his lands and chattels in my bailiwick, so that he appear in the Court of Queen's Bench, [or "C. P." or "Exch. of Pleas,"] at Westminster, on —, to answer A. B. in an action on promises [or as the plea is.] Dated the — day of —, 1839.

P. A. solicitor.

Levy forty shillings.

S. S. esquire, sheriff.

11. *Return of Execution of Distringas, and Service of Notice, where Defendant can be met with.*

The within-named C. D. is distrained by B. B. and J. B. of the value of 40s.: And I further certify and return, that at the time of the execution of this writ, I caused the said C. D. to be personally served with a true copy of the within writ, and the notice thereto subscribed and the indorsements thereon.

The answer of S. S. sheriff.

[See 1 Chit. Ar. Pr. 131.]

12. *The like, where Defendant cannot be met with.*

The within-named C. D. is distrained by B. B. and J. B. of the value of 40s.: And I further certify and return, that at the time of the execution of this writ, the said C. D. was not found, nor could be met with in my bailiwick; wherefore I caused a true copy of the within writ, and the notice thereto subscribed, and the indorsements thereon, to be left at his dwelling-house [or "usual place of abode,"] situate at — in my county, being the place where this writ was executed.

The answer of S. S. sheriff.

[See 1 Chit. Ar. Pr. 131.]

13. *Memorandum for and Entry of Appearance thereon.*

[Same as ante, 17.]

14. *Return of Nulla Bona and Non est inventus to Distringas.*

The within-named C. D. hath nothing in my bailiwick by which he can be distrained; nor is he found in the same.

The answer of S. S. sheriff.

15. *Affidavit of Return of Non est inventus, &c. to Distringas, and that same cannot be executed (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

P. A. of —, attorney for the above-named plaintiff, and B. B. of —, officer to the sheriff of —, severally make oath and say; and first this deponent P. A. for himself saith, that by the leave of this honourable court [or "the Honourable Mr. Justice —"], a writ of distringas with the proper notice in that behalf, a copy whereof is hereunto annexed [anner it], was on or about the — day of — last issued out

(a) Where the writ has been executed, no affidavit is necessary, Page

v. Hemp, 4 Dowl. 203; 2 C. M. & R. 494; 1 Gale, 186, S.C.

of this honourable court at the suit of the above-named plaintiff against the above-named defendant, in order to procure the said defendant's appearance in this court, to answer the said plaintiff in an action of — [as the action is], and which said writ and notice, together with a true copy thereof, was on or about the — day of — last delivered to the said B. B. then acting as an officer to the said sheriff, to be duly executed. And this deponent further saith, that he on — last [or "instant"] searched at the office of the masters of this honourable court for the return of the said writ of distringas, and there found that the said sheriff had returned to the said writ, that the said defendant was not to be found in the said sheriff's bailiwick, and that he had no goods or chattels therein by which he could be distrained: And this deponent B. B. for himself saith, that he this deponent did on the — day of — last [or "instant,"] by virtue of a warrant granted by the said sheriff upon the said writ of distringas, proceed to distrain [&c. you must here state fully and particularly the means that have been taken and used to serve and execute the writ of distringas, so as to satisfy the court or judge that due and proper means were taken and used for that purpose. You should state that the defendant keeps out of the way to avoid the service, as mentioned in the form, ante, 18, No. 3; and some of the statements in that form will assist in the framing of this. The affidavit of the officer may be corroborated by the attorney or other persons.]

Sworn [&c. (a).]

P. A.

B. B.

[See 1 Chit. Ar. Pr. 132.]

16. Rule thereon, for entering an Appearance.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. } Upon reading the affidavit of P. A. and B. B. it is ordered that
v. { the plaintiff be at liberty to enter an appearance for the defendant
C. D. } in this action, according to the statute in that case made and provided, and to proceed thereon to judgment and execution.* Upon the motion of Mr. —.

By the Court.

[See 1 Chit. Ar. Pr. 132.]

17. Judge's Order thereon, in Vacation.

B. } Upon reading the affidavit of P. A. and B. B. I do order that [&c.
v. { proceed as in the preceding form to the asterisk,* and then thus:]
D. } Dated the — day of —, A.D. —.

[Judge's or Baron's signature.]

[See 1 Chit. Ar. Pr. 132.]

18. Memorandum for and Entry of Appearance thereon.

[Same as ante, p. 17.]

19. Return of Issues.

The manucaptors of the within-named defendant are B. B. and J. B. my bailiffs. Issues forty shillings.

The answer of S. S. esquire, sheriff.

(a) See Index, title "Jurat."

20. Rule Nisi for Sale of Issues in Q. B. or Exchequer.

On —, the — day of —, in — term, — Victoria.

B. } Upon reading the writ of distringas issued in this cause, it is
v. } ordered, that the defendant, upon notice of this rule to be given to
D. } him, shall, on — next, show cause why the issues returned upon
the said writ of distringas should not be sold, and the monies arising from
the sale thereof should not be forthwith brought into court, and why it
should not be referred to one of the masters to tax the plaintiff his costs,
occasioned by his issuing out the said writ; and why the costs when
taxed should not be paid out of the monies so brought into court, and why
the surplus of the said monies, after payment of the said costs, should
not be retained in court, until the purpose of the said writ be answered.
Upon the motion of Mr. —. By the Court.

[See 1 Chit. Ar Pr. 133.]

21. The like in C. P.

[Same as in the preceding form, but the rule is] “to show cause why it should not be referred to one of the masters, to tax the plaintiff’s costs of and occasioned by the writ of distringas, issued in this cause to the sheriff of —, and also the costs of this application to the court; and why the said sheriff should not be directed to sell so much of the issues levied by him, by virtue of the said writ, as will be sufficient to answer the said costs when taxed: and why the said sheriff should not, with the monies arising from such sale, pay to the plaintiff or his attorney such costs, and return the residue of the said issues to the defendant, pursuant to the statute in that behalf made and provided.”

22. Authority to restore Issues, on Appearance (a).

To the sheriff of —, or his bailiffs in this case appointed.

A. B. plaintiff against C. D. defendant.

Sir,

The defendant having appeared, you are hereby authorized and required to restore to him the issues levied by you, on process issued in this cause, between the said parties: for which this shall be your warrant. Dated the — day of —, 1839.

P. A. attorney for the said plaintiff.

(a) *Quere*, whether the goods must not be returned without such authority being given, on an appearance being

entered? See *Smith v. M'Donald*, 1 Dowl. 688.

CHAPTER III.

PROCEEDINGS FROM THE DECLARATION TO THE ENTERING OF THE
CAUSE FOR TRIAL, INCLUSIVE.

SECTION I.—THE DECLARATION.

1. *Demand of Declaration.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. v. C. D.

The defendant demands a declaration in this cause, otherwise judgment
of non pros. Dated this —, 1839. Yours, &c.To Mr. P. A., plaintiff's attorney,
[or "agent."]D. A., defendant's attorney,
[or "agent."]

[See 1 Chit. Ar. Pr. 139.]

2. *Rule for Time to declare.*

On the — day of —, A. D. 1839.

B.) It is ordered that the plaintiff have [a month's] time [or "further
v.) time"] to declare [or "until the first day inclusive of the next
D.) term," or "last day inclusive of the present term"] if the defend-
ant is not in custody. By the Court.Side Bar, [or in G. P. here say, "In the Treasury Chamber, at the
plaintiff's instance."]

[See 1 Chit. Ar. Pr. 138.]

3. *Rule to declare peremptorily.*

In the Q. B. [or "Com. Pleas." or "Exch. of Pleas."]

On the — day of —, A. D. 1839.

B.) Upon reading the rule made in this cause on —, it is ordered,
v.) that the plaintiff, upon notice of this rule to be given to his attorney,
D.) shall peremptorily declare in this cause on or before —, otherwise
that a non pros may be entered. Upon the motion of Mr. —.

By the Court.

[See 1 Chit. Ar. Pr. 139.]

4. *Forms of Declarations.*[It is not within the province of this work to contain forms of special
pleadings; and only such forms are given as are most simple and in common
use, and which an attorney may be reasonably expected to prepare. In other
cases the attorney should get the declaration drawn by counsel or special
pleader.]

5. Beginning and Conclusion of a Declaration after a Writ of Summons (a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, in the year of our Lord 1839.

— (venue) to wit: *A. B.* by *P. A.* his attorney [or "in his own proper person"], complains of *C. D.* who has been summoned to answer the said *A. B.* (b) in an action on promises, [or "of covenant," or "on the case," or "of trespass," or if in debt, say, "of debt, and he demands of him the sum of £— (the aggregate amount of the sums demanded in the subsequent part of the declaration,) which he owes to and unjustly detains from him" (c).] For that whereas [&c. here state the subject-matter of the declaration, (if in trespass omit the word "whereas," and state the trespass to have been committed "with force and arms, &c.") and conclude thus:] To the damage of the plaintiff of £—, and therefore he brings suit, &c. [Or in trespass conclude thus, "And other wrongs to the plaintiff then did, against the peace of our lady the queen, and to the plaintiff's damage of £—, and therefore he brings suit, &c."'] [If the action is by or against a party in a representative character, as in the case of executors, &c., this form must be altered accordingly; see forms, post, Book 5, Part 2.]

6. The like, after a Writ of Capias.

[The writ of capias prescribed by 1 & 2 Vict. c. 110, Sched., and the proceedings under it, are merely collateral to the action. A writ of summons must it seems (d) be sued out before the capias can be issued, and the main proceedings in the action are founded on the writ of summons, and not on the writ of capias. Neither the form nor the time of declaring, therefore, can be affected by the circumstance of a writ of capias having been sued out under 1 & 2 Vict. c. 110, s. 3. There is one case indeed in which (see *Turner v. Darnell*, 7 Dowl. 346,) the writ of capias under 2 W. 4, c. 39, may still be issued, viz., that of an insolvent liable to be detained or arrested under the 85th section of 1 & 2 Vict. c. 110. In that case, however, it is very unlikely that the plaintiff will proceed further than arresting or detaining the insolvent, for any further proceedings might be rendered fruitless by plea or *audita querela*, at the end of the prescribed period of imprisonment, and in such a case the plaintiff is not obliged to declare within two terms, and it is doubtful whether he is bound to declare at all. (See *Buzzard v. Bousfield*, 7 Dowl. 1.) For these reasons the forms connected with the old writ of capias are omitted in this edition.]

7. The like, where the Cause is removed from an inferior Court.

[See the forms, post, Book 4, Part 1, Chap. 4.]

(a) This form is for the most part prescribed by rule of M. T. 3 Will. 4. See 1 Chit. Ar. Pr. 146. The form of the issue prescribed by the R. H. 4 Will. 4, though it varies from this in the commencement of the declaration, as regards the statement of the day of issuing the writ, &c. need not, according to *Dupre v. Langridge*, 2 Dowl. 584, be followed in the declaration. See the form of the issue, post, 43.

(b) It would suffice if the com-

mencement stopped here.

(c) It would suffice, it seems, merely to say "in an action of debt," without stating what the plaintiff demands.

(d) It has been the practice to require an affidavit of this; see per Alderson, B. *Turner v. Darnell*, 7 Dowl. 346; but in *Holborn v. Tucker*, at Chambers, September, 1839, Maule, B. intimated that the point had undergone reconsideration.

8. *The like, by and against particular Persons.*

[See the forms as to Executors, *post*, Book 3, Part 2, Chap. 5 ; as to Bankrupts, see *id.* Chap. 9 ; as to Infants, see *id.* 7.]

9. *Common Indebitatus Count in Assumpsit for Goods sold, Work and Materials, Monies lent, &c., Interest and Account stated.*

[Commence as in the preceding forms, Nos. 5, 7, or 8, as the case may require.] For that whereas [or if it be not the first count say, "And whereas also"], the defendant on the — day of — A. D. —, was indebted to the plaintiff in £—, for [&c. here state any cause of action you may have recoverable under the indebitatus count. If you have arrested the defendant for work done in any particular character, such as attorney or otherwise, or for any other cause of action recoverable under this count, you should include a statement of the cause of action in the declaration, similar to that in the affidavit. (See the various forms of statements of causes of action in affidavits to hold to bail, *post*, which may be readily made applicable to the form of the declaration). The following is the short form for goods sold and delivered, work and materials, monies lent, paid, had and received, interest, and on an account stated. And in £— for] the price and value of goods [or "goods and chattels,"] sold and delivered [or "bargained and sold"] by the plaintiff to the defendant, at his request : and in £— for work done, and materials for the same provided by the plaintiff for the defendant, at his request : And in £— for money lent by the plaintiff to the defendant at his request : And in £— for money paid by the plaintiff for the use of the defendant, at his request : And in £— for money received by the defendant for the use of the plaintiff. And in £— for interest, for the forbearance by the plaintiff to the defendant, at his request, for divers spaces of time then elapsed, of money due and owing from the defendant to the plaintiff : And in £— for money found to be due from the defendant to the plaintiff on an account then (a) stated between them *. And the defendant afterwards, on the day and year aforesaid, in consideration of the [last-mentioned (b)] premises, respectively promised the plaintiff to pay the said [last-mentioned (b)] several monies respectively to the plaintiff, on request : Yet the defendant hath disregarded his [last-mentioned (b)] promises, and hath not paid any of the said [last-mentioned (c)] monies, or any part thereof. To the damage of the plaintiff of £—, and therefore he brings suit, &c.

[See 1 Chit. Ar. Pr. 146, &c.]

10. *Indebitatus Count in Debt.*

[Commencement as usual in debt, as ante, No. 5, then proceed as in the preceding form to the *, and then thus :] which said several sums were to be respectively paid by the defendant to the plaintiff on request, whereby and by reason of the non-payment thereof an action hath accrued to the

(a) The allegation of time appears to be unnecessary even in the account stated, *Leaf v. Leaf*, 7 Dowl. 189.

(b) If there is another count alleging a promise, let these words "last-mentioned" be inserted.

(c) If there is another count or counts, for instance on a bill or note, and there is no breach already alleged thereto, then omit these words "last-mentioned."

plaintiff to demand and have of and from the defendant the said several sums respectively, amounting together to and being the said sum above demanded: Yet the defendant hath not paid the said sum above demanded, or any part thereof. To the damage of the plaintiff of £—, and therefore he brings suit, &c.

11. *Declaration in Assumpsit, by Payee against Maker of a Promissory Note.*

For that whereas the defendant, on the — day of —, A.D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff £—, — months after the date thereof, which period had elapsed before the commencement of this suit (a): and then delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof: Yet the defendant hath disregarded his said promise, and hath not paid the said note or any part thereof: To the plaintiff's damage of £—, and therefore he brings suit, &c. [*If the case render it expedient, add an indebitatus count on the consideration for the bill, and on an account stated, and breach, as ante, 27, No. 9; at all events take care to insert a breach.*]

12. *The like, in Debt (b).*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff £—, for value received (c), — months after the date thereof, which period had elapsed before the commencement of this suit (a); and then delivered the said note to the plaintiff: And the defendant did not pay the said note on the day when it became due, or at any time afterwards, whereby and by reason of the non-payment thereof an action hath accrued to the plaintiff, to demand and have of and from the defendant the said sum above demanded: Yet the defendant hath not paid the said sum above demanded, or any part thereof: To the damage of the plaintiff of £10, and therefore he brings suit, &c. [*If the case render it expedient, add an indebitatus count in debt on the consideration for the bill, and on an account stated, and breach, us supra, No. 10.*]

13. *The like, in Assumpsit, by Payee against Maker on a Note payable on Demand (d).*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff £— on demand. [*If the case render it expedient, add an in-*

(a) The words in the rule of court (T. T. 1 Will. 4,) are, "which period has now elapsed," but as the form in that rule is given as an example, the words used in the text may be adopted, and are more strictly correct, although either will suffice.

(b) As to what is a count in debt, see *Cloves v. Williams*, 3 Bing. N. C. 869; *Compton v. Taylor*, 6 Dowl. 660.

(c) If these words "value re-

ceived," or some equivalent expression, be not in the note, it is doubtful whether debt will lie; *Cresswell v. Crisp*, 2 Dowl. 635. The Court of Exchequer in Ireland has held that it will; *Kinahan v. Palmer*, 2 Jones Rep. Ex. Ir. 131. And Alderson, B. in *Compton v. Taylor*, *ubi supra*, seems to have been of the same opinion.

(d) A note payable on demand is payable immediately; see *Norton v. Ellam*, 2 M. & W. 461.

debitatus count on the consideration for the bill, and on an account stated, and breach, &c. as ante, 27 ; at all events take care to insert a breach, for which see the form, ante, 27, No. 9.]

14. *The like, on a Note payable at a Banker's.*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff at Messrs. B. B. and Co.'s, bankers, London, (as in the note,) £—, — months after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof: But the said Messrs. B. B. and Co. did not nor did the defendant or any other person pay the said note, although the same was presented at the said Messrs. B. B. and Co.'s, bankers, London, aforesaid, on the day when it became due: Of all which the defendant then had notice. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, and breach, as ante, 27, No. 9 ; at all events take care to insert a breach.*]

15. *The like, on a Note payable after Sight (a).*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff £—, — months after sight thereof; and then delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof: And the plaintiff avers, that afterwards, on the day and year aforesaid, the defendant had sight of the said note, and that — months from such sight had elapsed before the commencement of this suit. [*If the case render it expedient, add an indebitatus count on the consideration for the note, and on an account stated, and breach, as ante, 27, No. 9 ; at all events take care to insert a breach.*]

16. *The like, on a Note for less than Five Pounds (b).*

For that whereas the defendant, on, &c. at [120, Whitechapel Road,] made his promissory note in writing, and signed the same in the presence of W. W., who then duly attested such signature, and subscribed his name as a witness thereto: and the defendant thereby promised to pay to the plaintiff, by the name and description of —, of —, (being the name and then place of abode of the plaintiff, to whom the money in the said note specified was to be paid,) four pounds, — days after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, and breach, as ante, 27, No. 9 ; at all events take care to insert a breach.*]

(a) See *Dixon v. Nuttall*, 4 Tyr. 1014; 1 C. M. & R., S. C.

(b) See 7 Geo. 4, c. 6; 17 Geo. 3,

c. 30. Quære, whether a count in the ordinary form would not suffice; see Steph. Pl. 401.

17. *The like, on a Note payable by Instalments, where the Whole became due upon one Default.*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff £25 by the instalments and in manner following; (that is to say) £10 on the — day of — then next, £10 on the — day of — then next, and the remaining £5 on the — day of — then next; and that in case default should be made in payment of any or either of the said instalments, the whole of the said sum of £25, or as much thereof as should be remaining unpaid at the time of such default, should become due and payable; and the defendant, on the day and year first aforesaid, delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof: And the plaintiff avers, that afterwards, on the — day of —, A. D. —, default was made by the defendant in payment of the first of the said instalments, whereby, and according to the tenor and effect of the said note, the defendant became liable to pay to the plaintiff the said sum of £25, on request. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, and breach, as ante, 27, No. 9; at all events take care to insert a breach.*]

18. *The like, where all Instalments are due by Lapse of Time.*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff £25, by the instalments and in manner following: (that is to say) £10 on the — day of — then next, £10 on the — day of — then next, and the remaining £5 on the — day of — then next; and the defendant, on the day and year first aforesaid, delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof: And the plaintiff avers, that the several times for payment of the said several instalments had respectively elapsed before the commencement of this suit. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, and breach, as ante, 27, No. 9; at all events take care to insert a breach.*]

19. *The like, on Note payable by Instalments, where Whole not due on one Default.*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the plaintiff £25, by the instalments and in manner following; (that is to say) £10 on the — day of — then next, £10 on the — day of — then next, and the remaining £5 on the — day of — then next; and the defendant, on the day and year first aforesaid, delivered the said note to the plaintiff, and promised the plaintiff to pay the same according to the tenor and effect thereof: And the plaintiff avers, that afterwards, and before the commencement of this suit, on the — day of —, A. D. —, the first of the said instalments of £10 became and was due and payable from the defendant to the plaintiff, according to the tenor and effect of the said note. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, as ante, 27, No. 9; at all events insert a breach.*]

20. *Declaration in Assumpsit, by Indorsee against Maker.*

For that whereas the defendant, on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the order of E. F. £—, — months after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the said note to the said E. F., who then indorsed the same [“to one G. H., who then indorsed the same,” so stating any other indorsement,] to the plaintiff: And the defendant then promised the plaintiff to pay him the amount of the said note, according to the tenor and effect thereof and of the said indorsements. [*If the case render it expedient, add a count on an account stated and breach, as ante, 27, No. 9; at all events insert a breach.*]

21. *The like, by Indorsee against Payee.*

For that whereas one E. F., on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the order of the defendant £—, — months after the date thereof, which period had elapsed before the commencement of this suit: and then delivered the said note to the defendant, who then indorsed the same to the plaintiff: And the said E. F. did not pay the said note, although the same was presented to him on the day when it became due: Of which the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said note when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

22. *The like, by an Indorsee against Payee, averring that Maker had no Effects, to dispense with Notice of Non-payment.*

For that whereas one E. F., on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the order of the defendant £—, — months after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the said note to the defendant, who then indorsed the same to the plaintiff: And the said E. F. did not pay the said note, although the same was presented to him on the day when it became due: And the plaintiff avers, that at the time of making the said note, and from thence until the time when the same was so presented for payment, the said E. F. had not any effects of the defendant, nor had the said E. F. received any consideration for the making or paying of the said note, nor hath the defendant sustained any damage by reason of his not having had notice of the non-payment thereof: Of which the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said note when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

23. *The like, by Indorsee against Indorser.*

For that whereas one E. F., on the — day of —, A. D. —, made his promissory note in writing, and thereby promised to pay to the order

of *G. H.* £——, —— months after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the said note to the said *G. H.*, who then indorsed the same to the defendant, who then indorsed the same to the plaintiff: And the said *E. F.* did not pay the said note, although the same was presented to him on the day when it became due: Of which the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said note when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the note and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

24. *The like, by Indorsee against Indorser of Note, payable at a Banker's.*

For that whereas one *E. F.*, on the —— day of ——, A. D. ——, made his promissory note in writing, and thereby promised to pay to the order of *G. H.*, at Messrs. *B. B. & Co.*'s, bankers, *London*, £——, —— months after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the said note to the said *G. H.*, who then indorsed the same to the defendant, who then indorsed the same to the plaintiff: And the said Messrs. *B. B. & Co.* did not, nor did the said *E. F.*, or any other person, pay the said bill, although the same was presented at the said Messrs. *B. B. & Co.*'s, bankers, *London*, aforesaid, on the day when it became due: Of which the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said note when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add a count on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

25. *Declaration in Assumpsit by Payee against Drawer of Check.*

For that whereas the defendant, on the —— day of ——, A. D. ——, made his draft, or order, in writing, for the payment of money, called a banker's check, and directed the same to Messrs. *B. B. & Co.* (*as in the check*), and thereby required the said Messrs. *B. B. & Co.* to pay to the plaintiff, or bearer, £——, and then delivered the same to the plaintiff: And the said Messrs. *B. B. & Co.* did not pay the said check, although the same was then presented to them for payment thereof: Whereof the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said check when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the check and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

26. *The like, by Bearer against Drawer of Check.*

For that whereas the defendant, on the —— day of ——, A. D. ——, made his draft, or order, in writing, for the payment of money, called a banker's check, and directed the same to Messrs. *B. B. & Co.*, and thereby required the said Messrs. *B. B. & Co.* to pay to *D. D.*, or bearer, £——, and then delivered the same to the said *D. D.*, who then transferred and

delivered the same to the plaintiff, who still is the bearer thereof: And the said Messrs. B. B. & Co. did not pay the said check, although the same was then presented to them: Whereof the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said draft, or order, when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add a count on an account stated, if there has been any promise to pay, and breach, as ante, 27, No 9; at all events insert a breach.*]

27. *Declaration in Assumpsit by Drawer against Acceptor of Inland Bill.*

For that whereas the plaintiff, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to the defendant; (*if the bill be not directed to the defendant, omit this averment as to the direction,*) and thereby required the defendant to pay to the plaintiff £—, — months after the date thereof, which period had elapsed before the commencement of this suit: And the defendant then accepted the said bill, and promised the plaintiff to pay the same according to the tenor and effect thereof and of the said acceptance thereof. [*If the case render it expedient, add an indebitatus count upon the original consideration for the acceptance, and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

28. *The like, in Debt (a).*

For that whereas the plaintiff, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £—, for value received, (*as in the bill*), — months after the date thereof, which period had elapsed before the commencement of this suit: And the defendant then accepted the said bill, and agreed (a) to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof. [*If the case render it expedient, add an indebitatus count upon the consideration for the bill, and on an account stated, and breach in debt, as ante, 27, 28, No. 10; at all events insert a breach.*]

29. *Declaration on Promises, on Bill accepted specially payable at a Banker's.*

For that whereas the plaintiff, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £—, — months after the date thereof, which period had elapsed before the commencement of this suit: And the defendant then accepted the said bill, payable at Messrs. B. B. & Co.'s, bankers, London, and not otherwise or elsewhere (b), and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof: But the said Messrs. B. B. & Co. did not, nor did the defendant, or any other person, pay the said bill, although the same was presented at the said

(a) As to what is a count in debt, see *Compton v. Taylor*, 6 Dowl. 660.

(b) If these words are not in the bill it is not a special acceptance as against the acceptor; see 1 & 2 Geo. 4, c. 78, s. 1. The words "and not

elsewhere" have been held sufficient for this purpose. As to the effect of these words against the drawer, see *Gibbs v. Mather*, in Cam. Scacc. 8 Bing. 221.

Messrs. B. B. & Co.'s, bankers, London aforesaid, on the day when it became due: Of which the defendant then had notice. [*If the case render it expedient, add an indebitatus count on the consideration for the bill and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

30. *The like, by Drawer against Acceptor, where Drawer, not being Payee, has taken up the Bill.*

For that whereas the plaintiff, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to E. F., or order, £—, — months after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the same to the said E. F.: And the defendant then accepted the said bill, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof: Yet he did not pay the amount thereof, although the said bill was presented to him on the day when it became due; and thereupon the same was then returned to the plaintiff: Of all which the defendant then had notice. [*If the case render it expedient, add an indebitatus count on the consideration for the bill, and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

31. *Declaration in Assumpsit by Payee against Acceptor.*

For that whereas one E. F., on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £—, — months after the date thereof, which period had elapsed before the commencement of this suit; and then delivered the same to the plaintiff: And the defendant then accepted the said bill, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of the said acceptance thereof. [*If the case render it expedient, add count on account stated, if there has been any promise to pay, and breach, as ante, 27, No. 9; at all events insert a breach.*]

32. *Declaration in Assumpsit, by Indorsee against Acceptor (a).*

For that whereas one E. F. on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the said E. F.'s order £—, — months after the date thereof, which period had elapsed before the commencement of this suit; and the defendant then accepted the said bill: And the said E. F. then indorsed the same [to G. H., who then indorsed the same to I. K., who then indorsed the same] to the plaintiff: And the defendant then promised the plaintiff to pay him the amount of the said bill, according to the tenor and effect thereof, and of the said acceptance and indorsements. [*If the case render it expedient, add a count on an account stated, if there has been any promise to pay, and breach, as ante, 27, No. 9; at all events insert a breach.*]

(a) Must be in assumpsit. Debt will not lie in this case; *Cloves v. Williams*, 3 Bing. N. C. 869.

33. Declaration in Assumpsit by Bearer against Acceptor of Bill payable to Bearer.

For that whereas one *E. F.*, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the said *E. F.*, or bearer, £—, — months after the date thereof, which period had elapsed before the commencement of this suit: And the defendant then accepted the said bill, and the said *E. F.* then duly transferred and delivered the same to the plaintiff, who, at the time of the commencement of this suit, was, and still is, the bearer thereof, whereof the defendant then had notice; and then, in consideration of the premises, promised the plaintiff to pay him the amount of the said bill when he the defendant should be thereunto afterwards requested.] *If the case render it expedient, add a count on an account stated, if there has been an promise to pay, and breach, as ante, 27, No. 9; at all events insert a breach.*]

34. The like, by Payee against Drawer, on Non-acceptance.

For that whereas the defendant, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to one *E. F.*, and thereby required the said *E. F.* to pay to the plaintiff £—, — months after the date thereof, and then delivered the same to the plaintiff: And the said bill was then presented to the said *E. F.* for acceptance, but the said *E. F.* then refused to accept the same, whereof the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said bill when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the bill and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

35. The like, by Payee against Drawer, on Non-payment.

For that whereas the defendant, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to one *E. F.*, and thereby required the said *E. F.* to pay to the plaintiff £—, — months after the date thereof, which period had elapsed before the commencement of this suit, and then delivered the same to the plaintiff: And the said *E. F.* did not pay the said bill, although the same was presented to him on the day when it became due; whereof the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said bill when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the bill and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

36. The like, by Payee against Drawer, on Non-payment of Bill accepted payable at a Banker's.

For that whereas the defendant, on the — day of —, A. D. —, made his bill of exchange in writing, and directed the same to one *E. F.*, and thereby required the said *E. F.* to pay to the plaintiff £—, — months after the date thereof, which period had elapsed before the commencement of this suit, and then delivered the same to the plaintiff; and the said *E. F.* then accepted the said bill, payable at Messrs. *B. B. & Co.*,

bankers, London; and the said Messrs. B. B. & Co. did not, nor did the said E. F. or any other person, pay the said bill, although the same was presented at the said Messrs. B. B. & Co. bankers, London, aforesaid, on the day when it became due: Of all which the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said bill when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the bill and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

37. *The like, by Payee against Drawer, on Non-payment, averring that Drawee had no Effects of Drawer, in Order to dispense with Notice of Non-payment.*

For that whereas the defendant, on the — day of —, A.D. —, made his bill of exchange in writing, and directed the same to one E. F., and thereby required the said E. F. to pay to the plaintiff £—, — months after the date thereof, which period had elapsed before the commencement of this suit, and then delivered the same to the plaintiff: And the said E. F. did not pay the said bill, although the same was presented to him on the day when it became due: And the plaintiff avers, that at the time of making the said bill, and from thence until and at the time when the same was so presented for payment, the said E. F. had not any effects of the defendant, nor had he received any consideration for the acceptance or payment of the said bill, nor hath the defendant sustained any damage by reason of his not having had notice of the non-payment thereof: Of all which the defendant on —, (*day after dishonour*) had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said bill when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add an indebitatus count on the consideration for the bill and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

38. *The like, by Indorsee against Drawer, on Non-payment.*

For that whereas the defendant, on the — day of —, A.D. —, made his bill of exchange in writing, and directed the same to one E. F., and thereby required the said E. F. to pay to the order of the defendant £—, — months after the date thereof, which period had elapsed before the commencement of this suit: And the defendant then indorsed the said bill [to G. H., who then indorsed the same] to the plaintiff: And the said E. F. did not pay the said bill, although the same was presented to him on the day when it became due: whereof the defendant then had notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said bill when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add a count on an account stated, if there has been a promise to pay, and breach, as ante, 27, No. 9; at all events insert a breach.*]

39. *The like, by Indorsee against Indorser (not also the Drawer), on Non-payment.*

For that whereas one E. F., on the — day of —, A.D. —, made his bill of exchange in writing, and directed the same to one G. H., and thereby required the said G. H. to pay to the order of the said E. F.

£—, — months after the date thereof, which period had elapsed before the commencement of this suit: And the said E. F. then indorsed the said bill [to I. K., who then indorsed the same] to the defendant, who then indorsed the same to the plaintiff: And the said G. H. did not pay the said bill, although the same was presented to him on the day when it became due; whereof the defendant then had due notice: And the defendant then, in consideration of the premises, promised the plaintiff to pay him the amount of the said bill when he the defendant should be thereunto afterwards requested. [*If the case render it expedient, add a count on the consideration for the indorsement and on an account stated, and breach, as ante, 27, No. 9; at all events insert a breach.*]

40. *The like, by Drawer against Acceptor of Foreign Bill payable in English Money.*

For that whereas the plaintiff, on the — day of —, A.D. —, in parts beyond the seas, (to wit,) at Antwerp, in the kingdom of Belgium, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £—, — months after the date [*&c. proceed in this case as on an inland bill, as ante, 33, No. 27.*]

41. *Declaration on a Bail-bond.*

See the form, post. Index, tit. BAIL-BOND.

42. *Other Forms of Declaration.*

See a form of Declaration in Replevin, in Ejectment, in Scire Facias, &c. post. Index, title REPLEVIN, EJECTMENT, SCIRE FACIAS, &c.

43. *Notice of filing Declaration, and to plead, where the Plaintiff enters an Appearance for Defendant.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between A. B. plaintiff and C. D. defendant.

Take notice, that a declaration, dated the — day of — last, [*or "instant,"*] is filed in the office of the Masters of this Honourable Court, at —, against you, at the suit of the above-named plaintiff, in an action on promises, (*or as the action is,*) and unless you plead thereto in four [*or "eight," as the case may require, see 1 Chit. Ar. Pr. 153,*] days from the service hereof, judgment will be signed against you by default. Dated the — day of —, 1839.

Your's, &c.

P. A. plaintiff's attorney,
[*or "agent."*]

To Mr. C. D. the above defendant.

[*See 1 Chit. Ar. Pr. 141, 142.*]

44. *Affidavit to obtain Leave to stick up a Notice of Declaration in the Office.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between A. B. plaintiff and C. D. defendant.

P. A. of —, attorney for the above-named plaintiff, maketh oath and saith, that this action was commenced on the — day of — last, [*or "instant,"*] by a writ of summons, and this deponent (*according to the fact*) on the — day of — last, [*or "instant,"*] personally served the said defendant with a copy of the said writ, and which appeared to this deponent to have been [*or "was"*] regularly issued out of and under the

seal of this Honourable Court, against the said defendant at the suit of the said plaintiff, to which said copy memoranda were subscribed and indorsements made thereon, pursuant to the statute in such case made and provided. And this deponent further saith, that the said defendant hath not appeared in this action, [or "had not appeared in this action before or at the hour of — in the afternoon of the — day of — last (or "instant") and he has not to the best of this deponent's knowledge and belief since appeared thereto."] And this deponent further saith, that since the said service, he hath made diligent inquiries after and to ascertain the residence and place of abode and resort of the said defendant; but that he hath not been able to ascertain either, and as well the residence as the place of abode and resort of the said defendant are wholly unknown to him, and that he is not able to ascertain the same, nor doth he know where to find or direct to him the said defendant, nor hath he been able to serve the said defendant personally, or otherwise howsoever, with a notice of declaration in this cause, which hath been duly filed in the proper office, with notice requiring the said defendant to plead thereto in — days. And this deponent further saith, that [*&c. here state actual facts as to the deponent's inquiries after the defendant, and make the affidavit as strong as possible, for the application will not be granted unless the most satisfactory inquiries have been made after defendant.*]

[See 1 Chit. Ar. Pr. 141, 142.]

SECTION II.

THE PLEA, &c.

1. Notice to plead upon a Declaration delivered absolutely (a).

The defendant is to plead hereto in four days, [or "eight days," as the case may require,] otherwise judgment.

[See 1 Chit. Ar. Pr. 136, 152.]

2. Notice to plead on a Declaration when filed.

[See the forms, ante, 37. 1 Chit. Ar. Pr. 136, 141.]

3. Præcipe for a Rule to plead.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

B. }
v. } Rule to plead.
D. }

P. A. plaintiff's attorney,
[or "agent,"] —, 1839.

[See 1 Chit. Ar. Pr. 157.]

4. Rule thereon.

B. } Unless the defendant shall plead within four [or "eight"] days,
v. } let judgment be entered for the plaintiff.
D. }

By the Court.

5. Demand of Plea when indorsed on Declaration.

The plaintiff demands a plea herein, by P. A. plaintiff's attorney,
[or "agent."]

[See 1 Chit. Ar. Pr. 158, 159.]

(a) Declaring de bene esse may be considered as virtually obsolete since 1 & 2 Vict. c. 110. See 1 Chit. Ar. Pr. 134.

6. *Demand of Plea when not indorsed on Declaration.*

In the Q. B. [or "C. P." or "Exch. of Pleas.,"] A. B. v. C. D.
 The plaintiff demands a plea in this cause, by Your's, &c.
 To Mr. D. A. defendant's attorney, P. A. plaintiff's attorney,
 [or "agent."] [or "agent."] —, 1839.
 [See 1 Chit. Ar. Pr. 159.]

7. *Term's Notice of Intention to proceed.*

In the Q. B. [or "C. P." or "Exch. of Pleas.,"] A. B. v. C. D.
 Take notice, that the plaintiff intends to proceed in this cause after the
 end of the ensuing term, by giving a rule to plead herein. Dated the
 — day of —, 1839. Your's, &c.
 To Mr. D. A. defendant's attorney, P. A. plaintiff's attorney,
 [or "agent."] [or "agent."]
 [See 1 Chit. Ar. Pr. 155.]

8. *Summons for Time to plead.*

B. } Let the plaintiff's attorney or agent attend me, at my chambers
 v. } in Rolls' Garden, to-morrow [or "on —"], at — of the clock
 D. } in the forenoon [or "afternoon"], to show cause why the defendant
 should not have a month's [further] time to plead. Dated this — day
 of —, 1839.
 [Judge's signature.]
 [See 1 Chit. Ar. Pr. 160.]

9. *Order thereon.*

B. } Upon hearing the attorneys or agents on both sides, I order that
 v. } the defendant have [a month's] further (a) time to plead, [after a
 D. } delivery of particulars,] he pleading issuably, rejoining gratis, and
 taking short notice of trial before the sheriff if a writ of trial be ordered,
 or for the first sittings in the next term [or "for the assizes," or otherwise,]
 if necessary, or in default of pleading, taking the like short notice of exe-
 cuting a writ of inquiry. [The Judge may omit such of these terms or im-
 pose others, as he may think fit. See 1 Chit. Ar. Pr. 160.] Dated the
 — day of —, 1839.
 [Judge's signature.]

10. *Rule to plead double, where no Summons or Order requisite.*

In the Q. B. [or "C. P." or "Exch. of Pleas.,"] — Term, — Victoria.
 B. } It is ordered, that the defendant have leave to plead several mat-
 v. } ters, to wit, [here state the substance of the pleas concisely. The
 D. } pleas which may be thus pleaded together, without a summons, or
 order, are as follows: viz. non assumpsit, or nunquam indebitatus (b), or

(a) If the word "further" be omit-
 ted, the time will be reckoned from
 the date of the order; *Lane v. Par-*
sons, 5 Dowl. 359.

(b) In the rule of T. T. 1 Will. 4,
 r. 13, 1 Chit. Ar. Pr. 178, the plea of
 nil debet, and not that of nunquam in-

debitatus, is mentioned; but the plea
 of nil debet was abolished by the rule
 of H. T. 4 Will. 4, 1 Chit. Ar. Pr.
 186. The plea of nunquam indebi-
 tatus comes within the spirit of the
 rule of T. T. 1 Will. 4, and is so con-
 sidered in practice.

non detinet, with or without a plea of tender as to part, a plea of the statute of limitations, set-off, a bankruptcy of the defendant, discharge under an insolvent act, plene administravit, plene administravit præter, infancy, and coverture, or any two or more of such pleas, but there must be this rule for pleading them.] Dated the — day of —, A. D. —.

[See 1 Chit. Ar. Pr. 172 to 180.]

11. *Summons for Leave to plead several Matters.*

B. } Let the plaintiff's attorney or agent attend me, at my chambers
v. } in Rolls' Garden, to-morrow [or "on —"] at — of the clock
D. } of the forenoon, [or "afternoon,"] to show cause why the defendant should not have leave to plead several matters in this cause, to wit, [here state concisely the nature of the proposed pleas, or annex an abstract, and say, "the several matters in the abstract annexed."] Dated the — day of —, A. D. —.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 172 to 180.]

12. *Order thereupon.*

B. } Upon hearing the attornies or agents on both sides, I order
v. } that the defendant have leave to plead several matters in this cause,
D. } to wit, [here state concisely the nature of the pleas, according to the Judge's permission, or annex an abstract, and say, "to plead the several matters in the abstract annexed."] Dated the — day of —, A. D. 1839.

[Judge's signature.]

13. *Rule thereon.*

In the Q. B. [or "C. P." or "Exch of Pleas."]

— Term, — Victoria.

B. } Upon reading the order of the Honourable Mr. Justice [or "Baron,"] —, dated the — day of —, 1839, it is ordered, that
v. } the defendant have leave to plead several matters, to wit, [state the abstract of the pleas, as in the Judge's order.] Dated the — day of —, A. D. —.

By the Court.

Forms of Pleas.

[The following forms of pleas are those only which are simple in their nature and in common use, and which the attorney may in most cases himself prepare. But if there be any doubt or difficulty, let him get the plea drawn or settled by his counsel or special pleader.]

14. *Plea of Non-assumpsit.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, in the year of our Lord —.

B. } And the defendant, by D. A. his attorney, says, * that he did not
ats. } promise [or if the declaration allege an undertaking, say, "under-
D. } take or promise,"] in manner and form as the plaintiff hath above
thereof complained against him; and of this the defendant put himself
upon the country, &c.

15. *Plea in Debt, that Defendant never was indebted.*

*As in form, supra, No. 14, to the *, and then thus: "that he never was indebted in manner and form as in the declaration alleged; and of this the defendant puts himself upon the country," &c. (a)*

16. *Plea of Non est Factum.*

*As in form, supra, No. 14, to the *, and then thus: "that the said writing obligatory [or 'indenture,' or 'articles of agreement,' or 'deed poll,'] is not his deed; and of this the defendant puts himself upon the country," &c.*

17. *Plea of Not Guilty, in Case or Trover.*

*As in form, supra, No. 14, to the *, and then thus: "that he is not guilty of the premises above laid to his charge, or any of them, or any part thereof, in manner and form as the plaintiff has above thereof complained against him; and of this the defendant puts himself upon the country," &c.*

18. *Plea of Not Guilty, in Trespass.*

*As in form, supra, No. 14, to the *, and then thus: "that he is not guilty of the said supposed trespasses above laid to his charge, or any or either of them, or any part thereof, in manner and form as the plaintiff has above thereof complained against him; and of this the defendant puts himself upon the country," &c.*

19. *Commencement of Plea by Infant, defending by Guardian.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, in the year of our Lord —.

*D. } And the defendant by G. G. who is admitted by the court of
ats. } our lady the queen now here, [or in C. P. "by the justices of our
B. } lady the queen of the Bench here," or in Exch. "by the barons of
her majesty's Exchequer here,"] to defend for the defendant, who is an
infant within the age of twenty-one years, as the guardian of the defend-
ant, says, that he the defendant did not promise, &c. [or as the plea is.]*

20. *Plea of Judgment recovered.*

See form, post, Book II. Part III.

Other Pleas referred to.

[See other forms of pleas of payment of money into court, pleas of plene administravit, &c. and pleas in ejectment, replevin, scire facias, and in abatement, and puis darrein continuance, referred to in the index of this work.]

(a) See R. H. 4 Will. 4, 1 Chit. Ar. Pr. 186.

SECTION III.

THE REPLICATION, &c.

1. *Rule to reply or surrejoin in Q. B.*

In the Q. B.

B. } Until — is given to the plaintiff to reply [or “surrejoin,” &c.]
 v. } Entered.
 D. }

[See 1 Chit. Ar. Pr. 195.]

2. *Entry of such Rule.*

In the Q. B.

B. } Until — is given to the plaintiff to reply [or “surrejoin,”]
 v. } otherwise let a *non-pros* be entered. By the Court.
 D. }

[See 1 Chit. Ar. Pr. 195.]

3. *Præcipe for Rule to reply or surrejoin, in C. P. or Exchequer.*

In the C. P. [or “Exch. of Pleas.”]

B. } Rule to reply [or “to surrejoin,” &c.]
 v. } D. A. defendant's attorney [or “agent.”]
 D. }

4. *Rule to rejoin or rebut, in Q. B.*

In the Q. B.

B. } Until — is given to the defendant to rejoin [or “rebut,” &c.]
 v. } Entered.
 D. }

[See 1 Chit. Ar. Pr. 197.]

5. *Præcipe for Rule to plead to New Assignment in Q. B.*

In the Q. B.

B. } Rule to plead to new assignment.
 v. } P. A. plaintiff's attorney [or “agent.”]
 D. }

[See 1 Chit. Ar. Pr. 197.]

6. *Rule thereon.*

B. } Unless the defendant shall plead to the new assignment within
 v. } four days, let judgment be entered for the plaintiff.
 D. }

[See 1 Chit. Ar. Pr. 197.]

By the Court.

7. *Præcipe for Rule to rejoin or rebut, or plead to new Assignment in C. P. or Exchequer.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

B. } Rule to rejoin, [or “to plead to new assignment,” or “to re-
 v. } but,” &c.]
 D. }

P. A. plaintiff's attorney [or “agent.”]

8. *Term's Notice of Intention to proceed.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

B. } Take notice, that the defendant [or "plaintiff"] intends to pro-
v. } ceed in this cause after the end of the ensuing term, by giving a
D. } rule to reply, [or "rejoin," &c.] herein. Dated the — day of
—, 1839.

Your's, &c.

P. A. plaintiff's [or, D. A. defendant's']
attorney [or "agent."]

To Mr. D. A. defendant's [or "P. A. plaintiff's"]
attorney [or "agent."]

[See 1 Chit. Ar. Pr. 196.]

9. *Similiter to Plea concluding to the Country.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. 1839.

B. } And the plaintiff as to the plea [or "pleas"] of the defendant,
v. } by him above pleaded, and whereof he hath put himself upon the
D. } country, doth the like.

10. *Replication to a Plea of Judgment recovered in another Court.*

[See post, Book II. Part III.]

SECTION IV.

THE ISSUE, &c.

1. *Issue, in an Action commenced by Writ of Summons, Capias, or Detainer (a).*

In the Q. B. [or "In the C. P." or "In the Exchequer of Pleas."]

The (date of declaration) day of —, in the — year of
our Lord 18—.

(Venue.)—A. B. by E. F. his attorney [or "in his own proper person,"
or "by E. F. who is admitted by the court here to prosecute for the said
A. B., who is an infant within the age of 21 years, as the next friend of
the said A. B." as the case may be,] complains of C. D., who has been
summoned to answer the said A. B. [or "arrested," or "detained in cus-

(a) This is the form prescribed for all the courts by R. H. 4 Will. 4, in actions commenced by the process prescribed by the 2 Will. 4, c. 39. It must of course be altered to meet the circumstances of each case. For forms of the issue in an action of ejectment see post, in replevin, post, in scire facias, post. No continuances or imparlances should be entered, see 1 Chit. Ar. Pr. 200. It must be here observed that in actions commenced by summons since 1st Oct. 1838, the issue

should state the commencement of the action to have been by writ of summons, even though a writ of capias, under 1 & 2 Vic. c. 110, have been issued in the course of the action. The forms as to writs of capias and detainer are still to be used in actions commenced by those writs before 1st Oct. 1838; and in proceedings under s. 85 of 1 & 2 Vic. c. 110, against insolvents, should such proceedings be carried on to issue, see ante, 26.

tody"] by virtue [or "served with a copy," as the case may be] of a writ issued on (date of the first writ) the — day of —, in the year of our Lord 18—, out of the court of our lady the queen, before the queen herself at Westminster," [or "out of the court of our lady the queen, before her justices at Westminster," or "out of the court of our lady the queen before the Barons of her Exchequer at Westminster," as the case may be] (a). For that [&c. Copy the declaration from these words to the end, and the plea and subsequent pleadings, with the dates and counsel's signature (if any) to the joinder of issue, and conclude in the same line, thus:]

Thereupon the sheriff is commanded that he cause to come here, on the — day of — (b), twelve &c., by whom &c., and who neither &c., to recognise &c., because as well &c.

2. Award of Venire where there are several Issues in fact (c).

Therefore as well to try this issue, as the said other issue [or "issues"] above joined between the parties aforesaid, the sheriff is commanded [&c. conclude as supra].

3. The like, where there are several Defendants, who plead separately (c).

Therefore as well to try this issue, as the said other issue [or "issues"] above joined between the plaintiff and the said E.F., the sheriff is commanded, [&c. conclude as supra.]

4. Issue, where one of several Defendants has suffered Judgment by Default in an Action on Promises (d).

[Commence as in the form, ante, 43, No. 1, and after copying the declaration, the plea, the issue thereon, as there directed, proceed thus:] And the said E.F. in his proper person comes and says nothing in bar or preclusion of the said action of the plaintiff, whereby the said E.F. remains therein undefended against the plaintiff. Wherefore the plaintiff ought to recover against the said E.F. his damages by reason of the promises. But because it is unknown to the court(e) here what damages the

(a) The form of the action need not be inserted. (See *Ball v. Hamlet*, 3 Dowl. 188; 1 C. M. & R. 575, S. C.; *Fergusson v. Mitchell*, 4 Dowl. 513; 1 Tyr. & G. 179; 1 Gale, 346; 2 C. M. & R. 687, S. C.) But in an action of debt, where the declaration commences with the usual demand of a sum certain, such demand should perhaps be inserted in the commencement of the issue.

(b) The form given by the rule of H. T. 4. Will. 4, leaves this space for the return-day of the venire. It seems that although the 3 & 4 Will. 4, c. 67, s. 2, allows the venire to be made returnable *forthwith*, a particular day must be named on which it is returnable, and that it will not be correct to

make it returnable "*forthwith*." (*Williams v. Calverly*, 14 Legal Obser. 13.)

(c) It would seem that the form preceding this would suffice for such a case, and it is most commonly adopted in practice.

(d) See the form of the judgment, *post*.

(e) In the Common Pleas it is usual, instead of this word "court," to say "justices," and in the Exchequer to say "barons," but this variation seems wholly unnecessary, and there seems no sound reason why the forms in the respective courts should not be uniform in this respect. In the forms prescribed by the New Rules of H. T. 4 Will. 4, it will be observed that this variation is not adopted.

plaintiff hath sustained by reason thereof; and because it is also at present unknown to the court here whether the said *C.D.* will be convicted of the premises upon which the said issue is above joined between the plaintiff and the said *C.D.* or not: and because it is convenient and necessary that there be but one taxation of damages in this suit; therefore let such taxation, and the giving of judgment in this behalf against the said *E.F.*, be stayed until the trial or determination of the said issue above joined between the plaintiff and the said *C.D.* And as well to try the said issue above joined between the plaintiff and the said *C.D.* as to inquire against the said *E.F.* what damages the plaintiff hath sustained in this behalf, the sheriff is commanded [*&c. conclude as ante, 44, No. 1.*]

5. *Issue, where Defendant suffers Judgment as to Part in an Action on Promises (a).*

[*Commence as in the form, ante, 43, No. 1; and after copying the declaration and defendant's plea, (which in the case for which this form was drawn was non assumpsit, except as to £30,) proceed thus:*] And as to the said sum of £30, parcel of the said several sums of money in the said declaration mentioned, the defendant says nothing in bar or preclusion of the said action of the plaintiff with respect to the said sum of £30, whereby the defendant remains therein undefended against the plaintiff in respect thereof. Wherefore the plaintiff ought to recover against the defendant his damages, on occasion of the not performing the said promises of the defendant with respect to the said sum of £30. But because it is unknown to the court (*b*) here what damages the plaintiff hath sustained on occasion thereof, and because it is convenient and necessary that there be but one taxation of the damages in this suit, therefore let the giving of judgment in this behalf be stayed until the trial of the said issue above joined between the said parties. And as well to try the said issue as to inquire of and assess the damages which the plaintiff hath sustained by reason of the not performing of the said promises of the defendant with respect to the said sum of £30, parcel of the said several sums of money in the said declaration mentioned, the sheriff is commanded, [*&c. conclude as ante, 44, No. 1.*]

6. *The like, in Debt.*

[*Commence as in the form, ante, 43, No. 1, and after copying the declaration and plea, proceed thus:*] And as to the said sum of £30, parcel of the said sum above demanded, the defendant says nothing in bar or preclusion of the said action of the plaintiff, whereby the defendant remains therein undefended against the plaintiff in respect thereof. Wherefore the plaintiff ought to recover against the defendant the said sum of £30, and also his damages which he hath sustained on occasion of the detaining thereof. But because [it is unknown to the court here what damages the plaintiff hath sustained on occasion of the detaining thereof, and be-

(a) See the form of the judgment, *post*.

(b) In the Common Pleas it is usual, instead of this word "court," to say "justices," and in the Exchequer to say "barons," but this variation seems wholly unnecessary, and

there seems no sound reason why the forms in the respective courts should not be uniform in this respect. In the forms prescribed by the new Rules of H.T. 4 Will. 4, it will be observed that this variation is not adopted.

cause(a)] it is convenient and necessary that there be but one taxation of the damages in this suit; therefore let the giving of judgment in this behalf be stayed until the trial of the said issue above joined between the said parties. And [as well (a)] to try the said issue [as to inquire of and assess the damages which the plaintiff hath sustained on occasion of the detaining of the said sum of £30, parcel of the said sum above demanded (a)] the sheriff is commanded [&c. conclude as ante, 44, No. 1.]

7. *The like, in Trespass (b).*

[Commence as in the form, ante, 43, No. 1, and after copying the declaration and plea, or rejoinder, proceed thus:] And the defendant, as to the residue of the trespasses in the said declaration mentioned, [or “as to the several trespasses above newly assigned,”] says nothing in bar or preclusion of the said action of the plaintiff, whereby the defendant remains therein undefended against the plaintiff in respect thereof. Wherefore the plaintiff ought to recover against the defendant his damages by him sustained on occasion of the said residue of the said trespasses, [or “of the said several trespasses above newly assigned:”] But because it is unknown to the court (c) here what damages the plaintiff hath sustained on occasion thereof; and because it is convenient and necessary that there be but one taxation of damages in this suit; therefore let the giving of judgment in this behalf be stayed, until the trial of the said issue above joined between the parties aforesaid: And as well to try the said issue as to inquire of and assess the damages which the plaintiff hath sustained on occasion of the committing of the said residue of the said trespasses, [or “of the said several trespasses above newly assigned,”] the sheriff is commanded [&c. conclude as ante, 44, No. 1.]

8. *Award of Venire, where there are several Issues, one triable by the Country, and another by the Court, on Nul tiel Record.*

Therefore as well to try this issue (*the issue in fact*) as to inquire what damages the plaintiff hath sustained on occasion of the premises, whereupon the said other issue is above joined between the parties aforesaid, to be tried by the record, in case the said last-mentioned issue shall happen to be found for the plaintiff, the sheriff is commanded [&c. conclude as ante, 44, No. 1.]

9. *Award of Venire, where there are Issues in Law and in Fact, and you intend trying the Issues in Fact first (d).*

[Commence as in the form, ante, 43, No. 1, and after the entry of all the pleadings, including the demurrer and joinder, proceed with the award of venire thus:] And because it is convenient and necessary that there be but one taxation of damages in this suit; thereupon, [as well (e)] to try the said issue above joined between the said parties, to be tried by the country, [as to inquire what damages the plaintiff hath sustained by occasion of the premises whereof the said parties have put themselves upon the

(a) Perhaps as this is a form in debt, the parts between brackets [] (relating to the assessment of damages) might be omitted.

(b) See a form of judgment, post.

(c) See ante, 45, n. (b).

(d) This is necessary, *Codrington v. Lloyd*, 1 Per. & D. 157.

(e) Perhaps in debt the parts of this form between brackets may be omitted.

judgment of the court, (a)] in case judgment should happen to be thereupon given for the plaintiff, the sheriff is commanded [*&c. conclude as ante, 44, No. 1.*]

10. *The like, where the Demurrer has been determined first.*

[*Commence as in the form, ante, 43, No. 1, and after the entry of all the pleadings, including the demurrer and joinder in demurrer, enter the following curia advisari vult, and then the award of venire, &c. thus:*] But because the court here are not yet advised what judgment to give in the premises whereof the said parties have put themselves upon the judgment of the court, a day is given to the said parties here until — (day of judgment on demurrer) to hear the judgment of the said court thereupon, for that the said court are not yet advised thereof &c. At which day come here the parties aforesaid, by their attornies aforesaid: And hereupon all and singular the premises whereof the said parties have put themselves on the judgment of the court, being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said [second] count of the said declaration is sufficient in law (b), wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises, whereof the parties have put themselves upon the judgment of the court, [*or, if in debt, instead of these latter words, from the word "wherefore," say, "therefore it is considered that the plaintiff do recover against the defendant his said debt of £—— in the said second count of the said declaration mentioned, together with his damages by him sustained on occasion of the detention thereof."*] But because it is unknown to the court here whether or not the defendant will be convicted of the said premises in the said issue above joined between the parties to be tried by the country, and because it is also unknown to the court here what damages the plaintiff hath sustained on occasion of the premises whereof the parties have put themselves upon the judgment of the court, and because it is convenient and necessary that there be but one taxation of damages in this suit; therefore let the giving of judgment in this behalf against the defendant be stayed until the trial of the said issue above joined between the said parties, to be tried by the country; and as well to try the said last-mentioned issue as to inquire of and assess the damages which the plaintiff hath sustained on occasion of the premises, whereof the said parties have put themselves upon the judgment of the court, the sheriff is commanded that he cause to come here on —, twelve &c., by whom &c., and who neither &c., to recognize &c., because as well &c.

11. *Award of Venire tam ad triandum quam ad inquirendum, with Suggestion of Breaches in Debt on Bond where Defendant pleads a Plea not leading to an Issue on the Breaches, and the Condition of the Bond is not set forth in the Pleadings (c).*

[*Commence as in the form, ante, 43, No. 1, and after copying the declaration, plea, and similiter, proceed thus:*] And hereupon the plaintiff prays that the said writing obligatory in the said declaration mentioned may be

(a) See n. (e), p. 46.

(b) Or if the judgment on demurrer be to a plea, say, "that the said plea of the defendant to the said first count of the said declaration is not sufficient

in law."

(c) See 2 Chit. Ar. Pr. Book 2, Part 4, Chap. 4, s. 3; and see the other forms, post, Book 2, Part 4, Ch. 4, s. 3.

enrolled, and the same is accordingly enrolled in these words, to wit, [*here set out the obligatory part of the bond verbatim.*] He also prays that the condition of the said writing obligatory may be enrolled, and the same is accordingly enrolled in these words, to wit: Whereas, &c. [*here set out the condition of the bond, beginning with the recital, if any.*] And for a breach of the said condition of the said writing obligatory, the plaintiff, according to the form of the statute in such case made and provided, suggests and gives the court here to understand and be informed, that [&c. *here assign the breach, and conclude as follows:*] Therefore to try the said issue above joined between the parties, and in case the said issue shall be found for the plaintiff, to inquire of the truth of the said breach in form aforesaid above assigned, and to assess the damages sustained thereby, the sheriff is commanded [&c. *conclude as ante, 44, No. 1.*]

12. *The like, where the Condition of the Bond has been set forth (a).*

[*Commence as in other cases, as in the form, ante, 43, No. 1, and after copying the declaration, plea, and similiter, proceed thus:*] And hereupon the plaintiff, for assigning a breach of the condition of the said writing obligatory, and to recover his damages by him sustained upon occasion thereof, according to the form of the statute in such case made and provided, suggests and gives the court here to understand and be informed, that [&c. *here assign the breach, and conclude as directed in the preceding form.*]

13. *The like, where the Breaches are assigned in the Pleadings.*

[In this case the common award of venire (*ante, 43, No. 1*) is sufficient; *Quin v. King*, 1 M. & W. 42; *Scott v. Staley*, 4 Bing. N. C. 724.]

14. *Award of Venire, when the Venue is laid in Berwick-upon-Tweed.*

And because the borough of Berwick is a place where the queen's writ of venire facias to summon a jury to try the said issue does not run; and because the burgesses of the said borough, by reason of their privileges, ought not to be put upon any jury to try the said issue out of the said borough, but the said issue ought to be tried by a jury of the county of Northumberland, which is the next adjacent county to the said borough of Berwick; which allegations of the said — are not denied by the said —; thereupon the sheriff is commanded [&c. *conclude as ante, 44, No. 1.*]

[*See 1 Chit. Ar. Pr. 201.*]

15. *Award of Mittimus to a County Palatine (b).*

Therefore let a jury be made thereof: And because the said issue above joined between the parties aforesaid ought to be tried by men of the county palatine of Lancaster [*or "Durham,"*] that is to say, of the

(a) See 2 Chit. Ar. Pr. Book 2, Part 4, Chap. 4, s. 3; and see the other forms, *post*, Book 2, Part 4, Ch. 4, s. 3.

(b) See 1 Chit. Ar. Pr. 199; and see the form of the mittimus, *post*, 66. The 6 & 7 W. 4, c. 19, has transferred

the palatinate jurisdiction of the Bishop of Durham to the crown (as a distinct royalty), and therefore the mittimus ought, it would seem, now to be directed to her majesty's justices as in this form, and not to the bishop.

body of the said county, where the writ of our said lady the queen doth not run, and not elsewhere; therefore to try the said issue above joined between the parties aforesaid, let the record of the plaint aforesaid be sent to her majesty's justices of the said county palatine of Lancaster [or "Durham,"] so that the same justices, by her said majesty's writ of that county, to be duly made, and to the sheriff of the same county directed, do command the said sheriff, that he cause twelve free and lawful men of the body of the said county palatine to come before the said justices, at their next general sessions or assize to be holden for the said county, after the said record shall have been delivered to them, each of whom &c., by whom &c., and who neither &c., to recognize &c., because as well &c. And when the verification and issue aforesaid shall have been there made and tried, then the said justices shall send the record of the plaint aforesaid, together with every thing that shall be done thereupon before them, in her said majesty's court there, to our said lady the queen, [or in C. P. "to her said majesty's justices," or in *Erch.* "to her said majesty's barons of her exchequer,"] at Westminster, at a certain day which the said justices shall appoint to the said parties, to be in her majesty's said court here, to hear judgment thereupon.

16. *Award of Venire to one of two Sheriffs where the other is interested in the Suit. (a)*

See form, *post*, Book 4, Part 1, Chap. 31, s. 1.

17. *The like to the Coroner, where there is only one Sheriff, and he is interested.*

See form, *post*, Book 4, Part 1, Chap. 31, s. 1.

18. *The like, where the Sheriff is next of Kin.*

See form, *post*, Book 4, Part 1, Chap. 31, s. 1.

19. *The like, to Elisors, where both Sheriff and Coroner are interested.*

See form, *post*, Book 4, Part 1, Chap. 31, s. 1.

20. *Award of Venire and Suggestion for the Trial in adjoining County.*

See form, *post*, Book 4, Part 1, Chap. 31, s. 1.

21. *The like, where the Venire is laid in a City or Town Corporate.*

See form, *post*, Book 4, Part 1, Chap. 31, s. 1.

22. *Award of Venire and Suggestion of Death of either Party.*

See form, *post*, Book 4, Part 1, Chap. 31, s. 3.

(a) This and the following forms of venire require suggestions on the roll, and they are; therefore, inserted under that head.

23. *Notice of having struck out the Similiter, and of having demurred when Issue is delivered.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

B. against D.

Take notice that I do not receive the issue delivered by you in this cause, but consider the same as a [replication] only. I have struck out the similiter and demurred. Dated this — day of —, 1839.

Your's &c.

D. A. defendant's attorney [or "agent."]

To Mr. P. A. plaintiff's attorney [or "agent."]

[See 1 Chit. Ar. Pr. 204.]

SECTION V.

NOTICE, &c. OF TRIAL.

1. *Notice of Trial, in London. (a)*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice of trial in this cause, for the — sittings within [or "for the first day of the sittings after," or "for the adjournment day of the sittings after," as the case is, (b) this present — term, to be holden at the Guildhall of the city of London. Dated this — day of —, 1839.

Your's &c.

To Mr. D. A.
defendant's attorney [or "agent."]

P. A. plaintiff's attorney
[or "agent."]

2. *The like, in Middlesex. (a)*

[Same as in the preceding form, but say,] "for the — sittings within [or "for the sittings after"] this present — term, to be holden at Westminster Hall, in the county of Middlesex."

3. *The like, at the Assizes. (a)*

[Same as in the preceding form, but say,] "for the next assizes to be holden at —, in and for the county of —."

4. *Notice of Trial, and Assessment of Damages, where Defendant has suffered Judgment by default as to Part.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that the issue [or "issues"] joined in this cause, between the above-named plaintiff and the above-named defendant, will be tried

(a) See 1 Chit. Ar. Pr. 205 to 212.

(b) There is a rule in the Exchequer of H. T. 1 Will. 4, 1 C. & J. 386, by which a notice of trial for the sit-

tings after term in London must specify whether the trial is to be had at the first day of the sittings, or on the adjournment day.

at the — sittings [or “next assizes,”] &c. [as in the forms, *supra*,] and that the jury who try the issue [or “issues”] will at the same time assess the damages against you upon the judgment by default in this cause. Dated this — day of —, 1839.

To Mr. D. A.
defendant's attorney [or “agent.”]

Your's, &c.
P. A. plaintiff's attorney
[or “agent.”]

5. *The like, where several Defendants, and only one has suffered Judgment by Default.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

Between A.B. plaintiff and C.D. and E.F. defendants.

Take notice that the issue [or “issues”] joined in this cause between the above-named plaintiff and the above-named defendant C.D. will be tried at the — sittings [or “next assizes,” &c. as in the forms *supra*, No. 1, 2, 3,] and that the jury who try the issue [or “issues”] will at the same time assess the damages against the above-named E.F. upon the judgment by default in this cause. Dated this — day of —, 1839.

To Mr. D. A.
defendant's attorney [or “agent.”]

Your's, &c.
P. A. plaintiff's attorney
[or “agent.”]

6. *Notice of Trial, where there are Issues in Law and Fact (a).*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

Between A.B. plaintiff and C.D. defendant.

Take notice, that the issue [or “issues”] in fact joined in this cause between the above parties, will be tried at the — sittings [or “next assizes,” &c. as in the forms *supra*, No. 1, 2, 3,] and that the jury who try the said issue [or “issues”] will at the same time assess the damages against you upon the demurrer [or “demurrers”] in this cause, in case judgment shall thereupon be given for the plaintiff. Dated this — day of —, A.D. 1839.

To Mr. D. A.
defendant's attorney [or “agent.”]

Your's, &c.
P. A. plaintiff's attorney
[or “agent.”]

7. *Notice of Trial, and Assessment of Damages on Breaches suggested in Debt on Bond. (b)*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

Between A.B. plaintiff and C.D. defendant.

Take notice, that the issue [or “issues”] joined in this cause between the above-named plaintiff and the above-named defendant, will be tried at the — sittings [or “next assizes,” &c. as in the forms *supra*, No. 1, 2, 3,] and that the jury who try the issue [or “issues”] will at the same time assess the damages against you on the breaches suggested in this cause. Dated this — day of —, 1839.

To Mr. D. A.
defendant's attorney [or “agent.”]

Your's, &c.
P. A. plaintiff's attorney
[or “agent.”]

(a) See *Codrington v. Lloyd*, 1 Per. & D. 157.

(b) Perhaps this special notice is

not necessary, on the ground that the common one conveys to defendant's notice all the incidents of the trial.

8. *Notice of Trial by Continuance. (a)*In the Q. B. [*or "C. P." or "Exch. of Pleas."*]Between *A.B.* plaintiff and *C.D.* defendant.

Take notice, that I do hereby continue the notice of trial given you in this cause, to the next sittings within [*or "sittings after"*] this present term. Dated this — day of —, 1839. Your's, &c.

To Mr. *D.A.* P. *A.* plaintiff's attorney
 defendant's attorney [*or "agent."*] [*or "agent."*]
 [See 1 Chit. Ar. Pr. 209.]

9. *Notice of Countermand.*In the Q. B. [*or "C. P." or "Exch. of Pleas."*]Between *A.B.* plaintiff and *C.D.* defendant.

Take notice, that I do hereby countermand the notice of trial given you in this cause. Dated this — day of —, A.D. 1839.

Your's, &c.
 To Mr. *D.A.* P. *A.* plaintiff's attorney
 defendant's attorney [*or "agent."*] [*or "agent."*]
 [See 1 Chit. Ar. Pr. 210.]

10. *Term's Notice of Trial.*In the Q. B. [*or "C. P." or "Exch. of Pleas."*]Between *A.B.* plaintiff and *C.D.* defendant.

Take notice, that the plaintiff intends to proceed in this cause, after the end of the ensuing term, by giving notice of trial herein. Dated this — day of —, 1839. Your's, &c.

To Mr. *D.A.* P. *A.* plaintiff's attorney
 defendant's attorney [*or "agent."*] [*or "agent."*]
 [See 1 Chit. Ar. Pr. 210.]

SECTION VI.

EVIDENCE.

1. *Notice requiring opposite Party to admit Documentary Evidence. (b)*

In the Q. B. }
 C. P. } *A.B. v. C.D.*
 or Exchequer. }

Take notice that the { Plaintiff } in this cause proposes to adduce
 in evidence the several documents hereunder specified, and that the same
 may be inspected by the { Plaintiff } his attorney or agent, at —,
 Defendant }
 on —, between the hours of —; and that the { Defendant } will
 Plaintiff }
 be required to admit that such of the said documents as are specified to

(a) Notice of trial cannot be continued more than once in a term; *Wyatt v. Stocken*, 6 Ad. & El. 803.

(b) This form is the one prescribed by the rule of H. T. 4 Will. 4. See 1 Chit. Ar. Pr. 215.

To E. F. Attorney

G.H. Attorney

[Here describe the documents, the manner of doing which may be as follows:]

ORIGINALS.

Description of the Documents.	Date.
Deed of Covenant between <i>A.B.</i> and <i>C.D.</i> 1st part, and <i>E.F.</i> 2d part - - - - }	1st January, 1828.
Indenture of Lease from <i>A.B.</i> to <i>C.D.</i> - - - - }	1st February, 1828.
Indenture of Release between <i>A.B.</i> , <i>C.D.</i> 1st part, &c. - - - - }	2d February, 1828.
Letter—Defendant to Plaintiff - - - - }	1st March, 1828.
Policy of Insurance on Goods by Ship <i>Isabella</i> , on voyage from <i>Oporto</i> to <i>London</i> - - - - }	3d December, 1827.
Memorandum of Agreement between <i>C.D.</i> Captain of the said Ship, and <i>E.F.</i> - - - - }	1st January, 1828.
Bill of Exchange for £100, at three months, drawn by <i>A.B.</i> on and accepted by <i>C.D.</i> , indorsed by <i>E.F.</i> and <i>G.H.</i> - - - - }	1st May, 1829.

COPIES.

Description of Documents.	Date.	Original or Duplicate, served, sent, or delivered, when, how, and by whom.
Register of Baptism of <i>A.B.</i> in the parish of <i>X.</i> - - - }	1st Jan. 1808.	{ Sent by General Post, 2d Feb. 1828.
Letter, Plaintiff to defendant -	1st Feb. 1828.	
Notice to produce Papers - -	1st March, 1828.	
Record of a Judgment of the Court of Queen's Bench, in an action <i>J.S. v. J.N.</i> - - }	Trinity Term, 10th Geo. IV.	{ Served 2d March, 1828, on defendant's attorney, by <i>E.F.</i> of —.
Letters Patent of King Charles II. in the Rolls Chapel - - }	1st Jan. 1680.	

2. *Admission thereunder.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A.B.* plaintiff and *C.D.* defendant.

I do hereby, as the attorney of the above-named [plaintiff] agree to admit, and do admit in evidence on the trial of this cause, the paper-writing hereunto annexed marked *A.* [and signed by me] as and to be a true and sufficient copy of [the certificate of the registry of the ship or vessel called the —, of —, as therein described, and made on the — day of —; and I do hereby also, as such attorney, further agree to admit, and do admit, in evidence on such trial, the paper writing hereto annexed, and marked *B.* [and signed by me] as and to be a true and sufficient copy of [the affidavit of the said — of the building and ownership of the said ship or vessel, and other the matters in such affidavit contained, and the same was sworn as therein stated.] Dated this — day of —, 1839.

Your's, &c.

To Mr. *D.A.*
defendant's attorney [or "agent."]

P.A. plaintiff's attorney
[or "agent."]

3. *Summons requiring Admission of Attestation of a Deed or Signature of a Bill, &c.*

B. } Let the [defendant's] attorney or agent attend me at my cham-
v. } bers, in Rolls' Garden, to-morrow [or "on the —,"] at —
D. } of the clock in the — noon, to show cause why the [defendant]
shall not make the admissions required by the notice in that behalf
already given to his attorney or agent, or why, in case of refusal, he shall
not be subject to the costs of the proof. Dated this — day of —,
1839. (Judge's signature.)

[See 1 Chit. Ar. Pr. 213.]

4. *Notice to produce Papers, &c.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A.B.* plaintiff and *C.D.* defendant.

Take notice, that you are hereby required to produce to the court and jury, on the trial of this cause, a certain indenture, dated, &c., and made between [describing the deed, bill, agreement, or other instrument, letters, papers, books, &c. that you desire the opposite party to produce in evidence at the trial,] and all other documents, letters, books, papers, and writings whatsoever, in anywise relating to the matters in question in this cause. Dated this — day of —, 1839.

Your's, &c.

D.A. defendant's [or "plaintiff's"] attorney [or "agent."]
To the above-named plaintiff [or "defendant,"]
and to Mr. *P.A.* his attorney [or "agent."]

[See 1 Chit. Ar. Pr. 230.]

5. *Notice to dispute Bankruptcy, &c.*

See form, post, Book 3, Part 2, Chap. 9.

6. *Præcipe for Subpœna ad Testificandum.*

— to wit. Subpœna for *W.W.*, *T.W.*, *S.W.*, and *F.W.*, to testify

between *A. B.* plaintiff and *C. D.* defendant, on the part of the plaintiff [or "defendant."]

P. A. plaintiff's [or "defendant's"] attorney [or "agent."] —, 1839.

[See 1 *Chit. Ar. Pr.* 232.]

7. *Subpœna ad Testificandum.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to *W. W.* [*names of all witnesses included in the subpœna*] greeting: We command you, that laying aside all and singular business and excuses you and every of you be and appear in your proper persons before our right trusty and well-beloved (*name of chief justice*) our chief justice assigned to hold pleas in our court before us, [or in *C. P.* "before Sir" (*name of chief justice*) "knight, our chief justice of the Bench;" or in the *Exch.* "before —," (*name of chief baron*), "lord chief baron of our court of Exchequer at Westminster,"] at the Guildhall of the city of London, [or in *Middlesex*, "at Westminster Hall, in the county of Middlesex," adding, in the *Exch.*, "in the place where our said court of Exchequer is usually holden; or, at the assizes, "before our justices assigned to take the assizes in and for the county of —, at —, in the said county,"] on — the — day of — instant [or "next"], by — of the clock in the forenoon of the same day, to testify all and singular those things which you, or either of you, know in a certain cause now depending in our court before us, [or in *C. P.* "before our justices," or in the *Exch.*, "before the barons of our said court of Exchequer,"] at Westminster, between *A. B.* plaintiff and *C. D.* defendant, in an action on promises, [or "of debt," &c. as the action is,] on the part of the plaintiff [or "defendant"] and on that day to be tried by a jury of the country; and this you, or any of you, shall by no means omit, under the penalty upon each of you, of £100. Witness, — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the — year of our reign.

[See 1 *Chit. Ar. Pr.* 232.]

8. *Præcipe for Subpœna duces tecum.*

— to wit. Subpœna for *W. W.* to testify and produce, &c. between *A. B.* plaintiff and *C. D.* defendant, on the part of the plaintiff [or "defendant."]

P. A. plaintiff's [or "*D. A.* defendant's"] attorney [or "agent,"] —, 1839.

[See 1 *Chit. Ar. Pr.* 233.]

9. *Subpœna duces tecum.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to *W. W.* greeting: We command you that [*proceed as in the common subpœna, supra*, No. 7, to the day of the trial, and then thus:] and also that you bring with you and produce at the time and place aforesaid [*here describe shortly the deeds, papers, letters, &c. you require the witness to produce, and which may be thus, according to the facts:* "a certain instrument purporting to be an indenture of lease made between *A. B.* of the one part and *C. D.* of the other part, and dated the — day of —, 1839; a certain paper purporting to be a receipt signed by *G. G.* of the sum of £— from one *P. P.*, and dated the — day of —, 1839; a certain information and complaint in

writing, on or about the — day of —, 1839, made and laid before you as one of her majesty's justices of the peace in and for the county of —, by — against —, respecting an alleged offence of stealing a spoon, and also a certain warrant purporting to have been given under your hand and seal on or about the day and year aforesaid, whereby certain constables to whom the said warrant was directed were authorized and required to bring the said — before you and others of her majesty's justices of the peace for the said county, at a certain time and place therein mentioned, namely, at —, in the said county, at the hour of eleven of the clock in the forenoon of Monday, the — day of —, to answer to the complaint therein mentioned; also a certain other information and complaint in writing on or about the — day of —, A. D. 1839, made and laid before you as one of her majesty's justices of the peace for the county of —, by the said — against the said —, respecting an alleged offence of stealing a spoon; and also the deposition and depositions and examinations made by the said — and other persons, and taken by you, or in your presence, on or about the said — day of —, upon the hearing of the said informations or otherwise; also the entries of the dismissal of the charges, on the occasions aforesaid, against the said —, and also all and every other entry and entries of the proceedings against the said — had upon the said informations, or in any ways relating to or affecting the same, together with all copies, drafts, and vouchers of the said informations, warrant, depositions, examinations, and entry of dismissal, or any or either of them, and also all other entries, writings, and vouchers in any way relating to the same,"] then and there to testify and show all and singular those things which you, or either of you, know, or the said deed or instrument doth import, of and concerning a certain cause now depending [&c., conclude as in the common subpoena, ante, 55, No. 7.]

[See 1 Chit. Ar. Pr. 233.]

10. Affidavit, to obtain Habeas Corpus ad Testificandum.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

A. B. of —, the above-named plaintiff, maketh oath and saith, that this cause is set down for trial at the sittings after this present term, to be holden at the Guildhall, London, [or "at Westminster Hall in the county of Middlesex," or "at the next assizes to be holden in and for the county of —"]; and that W. W. now a prisoner for debt, in custody of the marshal of the Queen's Bench prison, [or "in her majesty's prison of the Fleet," or "in the county gaol of —," as the case is,] is and will be a material witness for this deponent, at the trial of this cause: And this deponent further saith, that he is advised and verily believes, that he cannot safely proceed to the trial thereof without the testimony of the said W. W., and that he the said W. W. is ready and willing to attend as a witness at the trial of the said cause.

Sworn [&c. (a).]

A. B.

[See 1 Chit. Ar. Pr. 233.]

(a) See Index, title "Jurat."

11. *Præcipe for Habeas Corpus ad Testificandum.*

— to wit. Habeas corpus to testify, between *A. B.* plaintiff and *C. D.* defendant, on the part of the plaintiff [or "defendant."]
 —, 1839. *P. A.* attorney.

12. *Habeas Corpus ad Testificandum.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the marshal of our prison of the Marshalsea, [or "warden of our prison of the Fleet," or "to the sheriff of —," or other officer in whose custody the prisoner is,] greeting: We command you, that you have the body of *W. W.* detained in our prison, under your custody, as it is said, under safe and secure conduct,* before our right trusty and well-beloved (*name of chief justice*), our chief justice assigned to hold pleas in our court before us, [or in *C. P.* "before our right trusty and well-beloved (*name of chief justice*), our chief justice assigned to hold pleas in our court of the Bench," or in the *Exch.* "before our right trusty and well-beloved (*name of chief baron*), our lord chief baron of our court of Exchequer at Westminster"] at the Guildhall, [&c. as in the *subpæna*, ante, 55, No. 7,] on —, the — day of — next, by — of the clock in the forenoon of the same day, then and there to testify the truth, according to his knowledge, in a certain cause now depending in our court before us, [or in *C. P.* "before our justices of the Bench aforesaid," or in the *Exch.* "before the barons of our said Exchequer,"] and then and there to be tried, between *A. B.* plaintiff and *C. D.* defendant, in an action on promises, [or "of debt," &c. as the action is,] on the part of the said *A. B.* [or "the said *C. D.*"]; and immediately after the said *W. W.* shall then and there have given his testimony before our said chief justice, [or "chief baron," if in town; and if in the country, "before our said justices,"] that you return him the said *W. W.* to our said prison, under safe and secure conduct; and have there then [or in *C. P.* or *Exch.* "have there,"] this writ. Witness, — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 233.]

13. *Affidavit, for Rule or Order to examine Witness on Interrogatories or otherwise (a).*

In the *Q. B.* [or "*C. P.*" or "*Exch.* of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

A. B. of —, —, the above-named plaintiff, maketh oath and saith, that this action is brought for, &c. [stating the cause of action concisely,] and that issue was joined in this cause on the — day of — last, and notice of trial given for the — sittings within [or "sittings after"] — term last: And this deponent further saith, that *W. W.* (b) is a material and necessary witness for this deponent in the said cause, as he this deponent is advised and verily believes; and that he this deponent cannot safely proceed to the trial thereof without the testimony of the said *W. W.* And this deponent further saith, that the said *W. W.* is about to leave

(a) See a form, Tidd's Supp. 315.

(b) The affidavit should in general state the name of the witness or witnesses, or otherwise describe them.

See 1 Chit. Ar. Pr. 243. The examiners may be named at the time of showing cause; *Fearon v. White*, 5 Bowl. 713.

this kingdom, in a few days, for —, in parts beyond the seas, and is not expected to return for a considerable time, as he hath informed this deponent, and as this deponent verily believes; [or “that the said *W. W.* is now resident at —, in parts beyond the seas,” or “is dangerously ill, and not expected to recover,” or “is not expected to be able to attend the trial of the said cause,” &c. according to the fact.]

Sworn [&c. (a).]

A. B.

[See 1 Chit. Ar. Pr. 57.]

14. *The like, in another form.*

In the Q. B. [or “C. P.,” or “Exch. of Pleas.”]

Between *A. B.* plaintiff and *C. D.* defendant.

A. B. of &c., and *W. W.* of &c., make oath and say, and first he the said *A. B.* for himself saith, that this action hath been brought and is depending for the recovery of [*here state the cause of action concisely*] and that issue was joined in this cause on — last. And this deponent further saith, that the said *W. W.* is a material and necessary witness for and on the behalf of the said plaintiff in support of this action, and that with the evidence of the said *W. W.* this deponent is advised and verily believes the said plaintiff will obtain a verdict on the trial of this cause; but without the evidence of the said *W. W.* the said plaintiff cannot safely proceed to the trial of this cause. And this deponent further saith, that since the commencement of this action, as this deponent hath been informed and verily believes, the said *W. W.* hath been required immediately to proceed to —, in —, on very urgent business, and must remain there for upwards of two years. And the said *W. W.* for himself saith, that he is well acquainted with the facts and circumstances relative to this action, and that it hath become and is necessary for this deponent immediately to proceed to —, in —, on very urgent business of this deponent, in which he is deeply and personally interested, and that he expects and verily believes that he will be detained at — aforesaid, on the said business, for two years or upwards, and if this deponent doth not immediately, and before the end of this month, proceed to — aforesaid, the pecuniary interests of this deponent will be materially injured, and this deponent will sustain great loss.

Sworn [&c. (a).]

A. B.

W. W.

[See 1 Chit. Ar. Pr. 57.]

15. *Judge's Order to examine a Witness on Interrogatories before Commissioners in the Country (b).*

B. } Upon hearing the attornies or agents on both sides, and by virtue
v. } and authority of the statute in this behalf made and provided, I
D. } order that *W. W.*, a witness on behalf of the plaintiff, and now within the jurisdiction of this court, shall and may be examined upon interrogatories, to be exhibited to him at —, in the county of —, on the — day of —, or at such other time or place as shall be previously agreed upon between the parties, before *I. K.* and *L. M.*, of —, gentlemen, commissioners on behalf of the plaintiff, and *N. O.* and *P. Q.*, of —, gentlemen, commissioners on behalf of the defendant, or any three of them: And I further order that — days before the time appointed for such intended examination, the plaintiff's attorney shall deliver to the

(a) See Index, title “*Jurat.*”

(b) See a form, Tidd's Supp. 315.

defendant's attorney a copy of the interrogatories so intended to be exhibited as aforesaid; and that the defendant shall be at liberty to cross-examine the said witness upon cross-interrogatories to be exhibited in like manner; and that the costs of such examination and cross-examination be costs in the cause; and I do further order, that the proceedings in this cause be stayed until the — day of — next. Dated the — day of —, 1839. (Judge's signature.)

16. *The like, for Examination of Witness vivâ voce, without a Commission directing a Special Report (a).*

B.) Upon hearing the attornies or agents on both sides, and by their
v.) consent, and by virtue and authority of the statute made and pro-
D.) vided in this behalf, I do order that E. F. and G. H., witnesses on
behalf of the above-named plaintiff, and now within the jurisdiction of
this court, shall and may be respectively examined upon oath, before Mr.
Serjeant — [or “ —, esquire, barrister at law,” or “ —, gent.”]
&c.] And I do further order and direct, that the said witnesses may be
examined in chief by counsel, or by the attorney for and on the behalf of
the said plaintiff, and may be examined by counsel, or by the attorney for
and on behalf of the said defendant, and may be examined by the said
— (examiner's name), as he shall think fit; and that such examination
shall be had and taken vivâ voce, and not upon interrogatories; the said
several witnesses being severally sworn, or making affirmation, in cases
where such affirmation is allowed by law instead of oath, before me, or
some other judge of this court: And by the like consent and authority I
do further order, that it shall and may be lawful for the said — (ex-
aminer's name), and I do hereby require him to make, if need shall be, a
special report touching the examinations hereby directed, and the conduct
or absence of all or any of the said several witnesses: And lastly, by the
like consent and authority, I do further order and direct, that the said ex-
aminations shall be without delay returned to my chambers, certified
under the hand and seal of the said — (examiner's name), on or before
the — day of — next. Dated the — day of —, A. D. 1839.
(Judge's signature.)

17. *Rule of Court for a Commission, where the Witness is ill or abroad.*
In the Q. B. [or “ C. P.” or “ Exch. of Pleas.”]

On the — day of —, A.D. 1839.

B.) Upon reading the affidavit of A. B. and another, and upon hear-
v.) ing Mr. —, of counsel for the plaintiff, and Mr. —, of counsel
D.) for the defendant, [and with their consent,] it is ordered, by virtue of
the statute in this behalf made and provided, that a commission at the
instance of the [plaintiff] in this cause, to be settled and approved of by
one of the masters of this court, be issued, directed to [two] commis-
sioners to be named on the part of the plaintiff, and to [two] other com-
missioners to be named on the part of the defendant, respectively, for the
examination de bene esse before the said commissioners upon such com-
mission, of W. W. one of the said [plaintiff's] witnesses, who is now
[“ dangerously ill,” or “ resident beyond the seas at —, as it is said,”]
upon interrogatories to be exhibited to him under such commission; and
that the [defendant] be at liberty to exhibit cross-interrogatories for the
cross-examination of such witnesses before the said commissioners under

(a) See a form, Tidd's Supp. 316.

the said commission ; and that the attornies or agents of the said plaintiff and defendant, within a reasonable time (a) before the execution of the said commission, shall respectively deliver to each other correct copies of their respective interrogatories. And it is further ordered, that the said commission shall be executed by or in the presence of [two] at least, of the commissioners so to be appointed as aforesaid ; and that previously to the execution thereof, the time and place for executing the same shall be appointed by the said commissioners, or by any [two] or more of them, and they shall cause a notice of such appointment to be duly served upon each of the others of the said commissioners, and upon the attornies or agents of the said parties respectively [two] days, at least, before the execution of the said commission. And it is further ordered, that the said commission shall be returnable on the — day of —, and that the said commission, and the interrogatories and cross-interrogatories to be exhibited, and the depositions and cross examinations taken in manner aforesaid, be without delay transmitted, under the respective seals of such of the said commissioners as shall so take the same, to —, esquire, one of the masters of this court, and that the same be admitted to be read and given in evidence at the trial of this cause, saving all just exceptions.

By the Court.

[See 1 Chit. Ar. Pr. 242, 243.]

18. *Judge's Order for a Commission, where the Witness is ill or abroad.*

In the Q. B. [or "C. P." or "Exch."]

A. B. } Upon hearing the attornies or agents on both sides, I do order
v. } that a commission issue to examine the witnesses in this cause,
C. D. } upon interrogatories, and that the said commission be executed in
any one or two places in [Ireland] to be named by the [defendant's attorney] within [three] days from the present time, and that the said commission be executed before the last day of next — term, [or " —,"] and I further order that the names and descriptions of the witnesses be given by each party to the other (that is to say,) the defendant to give the names and descriptions of his witnesses to the plaintiff [ten days] before the examination of such witnesses, and the plaintiff to give the same notice to the defendant or his attorney of the names and descriptions of his witnesses, and that the plaintiff join in this commission. And I further order that the commissioners' names (one on each side) be furnished by each party to the other within three days from the date hereof, and that each party be at liberty to cross-examine on interrogatories, and that such cross-interrogatories be handed to the other party within [five] days after the receipt of the interrogatories in chief, and that the examination and cross-examination shall not proceed without the presence of both commissioners. And I further order that the said interrogatories and the depositions taken therewith be returned to my chambers in Rolls' Garden, under the hands and seal of the said commissioners, and that either party may be at liberty to take an office copy or copies, and that the same may be read in evidence at the trial of this cause, saving all just exceptions. Dated the — day of —, 1839.

(Judge's signature.)

[See 1 Chit. Ar. Pr. 382.]

(a) For the sake of avoiding disputes as to the reasonableness of the time, it may be as well to state in the rule the respective times for delivery

of interrogatories and cross-interrogatories, allowing a few days to elapse between them.

19. *Commission thereon.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to — (name the commissioners) greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any two or more of you, full power and authority diligently to examine the witnesses, upon certain interrogatories to be exhibited to them, as well on the part of A. B. plaintiff as on the part of C. D. defendant, in an action on promises [or “debt,” &c. as the case may be,] now depending between them in our court before us [or in C. P. “before our justices,” or in Exch. “before the barons of our Exchequer,”] at Westminster: And therefore we command you, any two or more of you, that on or before the — day of — now next ensuing, at a certain day and place, [or “certain days and places”] to be appointed by you for that purpose, you cause the said witnesses to come before you at [Paris,] and then and there examine each of them apart, upon the said interrogatories, on their respective corporal oath first taken before any two or more of you, according to the form of their several religions; and that you do take such their examinations, and reduce them into writing, on paper or parchment; and when you shall have so taken them, you are to send the same, without delay, to our said court before us, [or in C. P. “before our said justices,” or in the Exch. “before the barons of our said Exchequer,”] at Westminster, closed up, under your seals, or the seals of any two or more of you, distinctly and plainly set, together with the said interrogatories, and this writ, to be filed of record in the office of —, esq., one of the masters of the same court. And we further command you and every of you, that before you act in or be present at the swearing or examining of any witness or witnesses, you take an oath, according to the form of your several religions, that you will, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of this writ, upon the interrogatories produced and left with you; and we give you, any two or more of you, full power and authority, jointly or severally, to administer such oath to the rest, or any other of you. And we further command, that all and every the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue hereof, shall, before he or they be permitted to act as clerk or clerks as aforesaid, severally take an oath, truly, faithfully, and without partiality to any or either of the parties in the cause, to take and write down, transcribe, and ingross the deposition of all and every witness and witnesses produced before and examined by you the said commissioners, or any of you, as far forth as he or they are directed and employed by you the said commissioners, or any of you, to take down, write, or ingross the said depositions; which oath any two or more of you are hereby empowered to administer to such clerk or clerks, according to his or their several religions. And we further command, that previous to the execution of this commission, which is granted by us at the instance of the said plaintiff [or “defendant,”] and by him prosecuted, the said — and —, commissioners who have been named, approved, and appointed, on behalf of the plaintiff [or “defendant,”] shall give, or cause to be given, two days’ notice in writing of such execution of this commission, under their respective hands, to the said — and —, respectively, commissioners who have been named, approved of, and appointed, on behalf of the defendant, [or “plaintiff”] by delivering such notice to the said — and

— personally, or by leaving the same for them or him, at their or his then respective place or places of abode; and in and by such notice shall state the place, day and hour, whereat and wherein this commission shall be executed. (a) Witness — (name of chief justice or chief baron) at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 242.]

20. Interrogatories for Plaintiff.(b)

Interrogatories to be administered to *W. W.* a witness, to be produced, sworn, and examined on the part and behalf of *A. B.* plaintiff, in a certain cause now depending in her majesty's Court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas,"] at Westminster, against *C. D.* defendant, before —, one of her said majesty's justices of the same court, [or in the *Erch.* "one of the barons of her said majesty's Exchequer,"] pursuant to a rule of the said court, made on —, in the — year of the reign of Queen Victoria, [or if under an order, say, "pursuant to an order of the said justice, (or "baron," made the — day of —, 1839."]

First. Do you know the parties, plaintiff and defendant, in the title of these interrogatories named, or either and which of them; and how long have you known them, or either and which of them? Declare the truth, and your knowledge herein.

Secondly. Have you ever seen the said plaintiff write his name? Declare the truth, and your knowledge herein.

Thirdly. Do you, &c. [and so on, stating the questions you wish the witness to answer. They should not be leading questions.]

Lastly. Do you know of any other matter or thing, or have you heard, or can you say any thing, touching the matters in question in this cause, that may tend to the benefit and advantage of the said plaintiff, besides what you have been interrogated unto? If yea, declare the same fully and at large, and all circumstances and particulars relating thereto, to the best of your knowledge, remembrance, and belief, with your reasons, as if you had been particularly interrogated thereto.

[Counsel's signature.]

21. Interrogatories for Defendant.

Interrogatories to be administered to *W. W.* a witness to be produced, sworn, and examined on the part and behalf of *C. D.* the defendant, in a certain cause now depending against him in her majesty's Court of Queen's Bench, [or "Common Pleas," or "Exchequer,"] at Westminster, at the suit of *A. B.* plaintiff, before &c. [proceed and conclude as in last form.]

22. The like, to cross-examine a Witness.

Interrogatories to be administered by way of cross-examination to *W. W.* a witness &c. [proceed and conclude as in the forms, *supra*, No. 20, 21.]

(a) Supposing the opposite party refuse to name commissioners, or join in the commission, the latter clause should be omitted.

(b) See a variety of useful interrogatories in Mr. Hayward's work on the "Uniformity of Process Act," &c.

23. The like, for the Examination of Witnesses before Commissioners in Ireland.

Interrogatories to be administered to witnesses, to be produced, sworn, and examined at Dublin, or elsewhere in Ireland, on the part and behalf of *A. B.* the plaintiff, in a certain cause now depending in her majesty's Court of Queen's Bench, [or "Common Pleas," or "Exchequer of Pleas,"] at Westminster, at the suit of *A. B.* plaintiff, against *C. D.* defendant, before *E. F.* of &c., and *G. H.* of &c., commissioners named on behalf of the said plaintiff, and *J. K.* of &c., and *L. M.* of &c., commissioners named on behalf of the said defendant, or any two of them, so as that one of the commissioners of either party respectively shall be present, pursuant to &c. [*proceed and conclude as in preceding forms.*]

24. Notice of Time and Place appointed for Examination of Witness on Interrogatories (a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff v. *C. D.* defendant.

Take notice, that — the examiner duly appointed by her majesty's court of —, [or "by order of the Honourable Mr. Justice" (or "baron") —, bearing date, (&c.)] will attend to-morrow, the — day of — instant, [or "on —, the — day of — instant," or "next,"] at the house of —, situate [&c.] at — of the clock in the forenoon precisely, for the purpose of examining *G. H.*, a witness for and on behalf of the plaintiff [or "defendant"] in this cause, upon interrogatories, pursuant to the said rule [or "order."] Dated this — day of —, A.D. —.

Your's, &c.

To Mr. *E. F.* [or "*G. H.*"]
plaintiff's [or "defendant's,"]
attorney.

G. H. [or "*E. F.*"]
defendant's [or "plaintiff's,"]
attorney.

25. *Præcipe for Habeas Corpus ad Testificandum.*

Same as ante, 57, No. 12, but say "to testify before examiner."

26. *Writ of Habeas Corpus ad Testificandum before a Commissioner, &c.*

[*Proceed as in form, ante, 57, No. 13, to the asterisk*, and then thus:*] Before —, the examiner duly appointed by rule of our court before us, [or in C. P. "before our justices," or in the Exch. "before the barons of our Exchequer,"] at Westminster, [or if by judge's order, "by order of the Right Hon. —, our chief justice," or "chief baron," or "the Hon. —, one of the justices," or "barons,"] of our said court,] at the master's office in —, London, [or "at the house of —, situate, &c.] on —, the — day of — instant [or "next,"] by — of the clock in the forenoon of the same day (*the time and place appointed by the examiner,*) then and there to testify the truth according to his knowledge, in a certain cause now depending in our court before us, [or in C. P. "before our said justices," or in the Exch. "before the barons of our said Exchequer,"] between *A. B.* plaintiff and *C. D.* defendant, in an action on promises, [or "of debt," &c. *as the case may be,*] on the part of the said plaintiff [or "defendant"]: And immediately after the said *E. F.* shall

(a) See Form, Tidd's Sup. 316.

have given his testimony before the said examiner, that you return him the said *E.F.* to our said prison under safe and secure conduct; and have there then [*or in C.P. and Exch. "have there"*] this writ. Witness, [*&c. ante, 57.*]

27. *Affidavit for obtaining Writ, in nature of Mandamus, to examine Witnesses in India, or one of the Colonies, on stat. 13 Geo. 3, c. 63, s. 44, and 1 Will. 4, c. 22.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A.B.* plaintiff and *C.D.* defendant.

A.B. of —, the above-named plaintiff, maketh oath and saith, that this action, which is now pending in this honourable court, was commenced in — term last, [for a cause of action which arose in the province of — in India:] (*a*) And this deponent further saith, that *W.W.* and several persons are now residing in [the province of — in India, *or as the case may be,*] who are material and necessary witnesses for this deponent in the said cause; and without whose testimony he is advised and verily believes that he cannot proceed with safety to the trial thereof.

Sworn, &c. (*b*)

A.B.

[*See 1 Chit. Ar. Pr. 237, 238.*]

28. *Rule of Court thereon.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

The — day of —, A.D. 1839.

B. } Upon reading the rule made in this cause on the — day of
v. } — instant, (*c*) the affidavit of *A.B.*, and upon hearing Mr. —
D. } of counsel for the defendant, and Mr. — of counsel for the plaintiff, it is ordered, that a writ in the nature of a mandamus or commission issue, directed to the chief justice and the other judges of the supreme court of judicature at [Fort William] in [Bengal], commanding them to hold a court for the examination of *W.W.*, a witness on the part of the [plaintiff], and for receiving other proofs therein, pursuant to the statutes of the 13th year of King George the Third, c. 63, and the first of King William the Fourth, c. 22, and to perform all such matters and things as by the said statutes are required. And it is further ordered, that the said writ and depositions, taken in manner aforesaid, be transmitted under the seal of the said court, to *C.S.*, esq., one of the masters of this court, and be permitted to be read and given in evidence on the trial in this cause, saving all just exceptions. And it is further ordered, that the trial of the issue in this cause be put off until the return of the said writ.

[*See 1 Chit. Ar. Pr. 237, 238.*]

By the Court.

29. *Mandamus thereon.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the chief justice and the other judges of the supreme court of judicature at [Fort William] in [Bengal], greeting: Whereas a certain suit is now depending in our court before us [*or in C.P. "before our justices," or in Exch. "before the barons of the Exchequer,"*] at Westminster, between *A.B.* plaintiff and *C.D.* defendant, in an action on promises [*or "debt," &c. as the action is.*]

(*a*) Not absolutely requisite; *Bain v. De Vetry*, 3 Dowl. 516; see *id.* 35.

(*b*) See Index, tit. "*Jurat.*"

(*c*) There must be a rule nisi; *Doe d. Grimes v. Pattison*, 3 Dowl. 36.

And it hath been ruled and ordered by our said court that this writ shall be issued, commanding you to hold a court for the examination of *W. W.*, a witness on the part of the [plaintiff], and for receiving other proofs therein, pursuant to the statutes of the thirteenth year of King George the Third, c. 63, and the first year of King William the Fourth, c. 22, and to perform all such matters and things as by the said statutes are required, and that this writ and depositions, taken in manner aforesaid, be transmitted under the seal of your said court to *C. S.*, esq., one of the masters of our said court (*as in the rule of court*), and be permitted to be read and given in evidence on the trial of the said cause, saving all just exceptions: Now know ye that we command you with all due diligence to hold a court for the examination on oath of the said *W. W.* on the part of the said [plaintiff] upon certain interrogatories to be exhibited to you by the parties aforesaid, or one of them, in the action aforesaid, and for receiving other proofs therein, pursuant to the said statutes, and to perform all such other matters and things as by the said statutes are required, and we hereby give you full power and authority to do so; and we command you, that at a certain time and place, or times and places, to be by you appointed for that purpose, you cause the said *W. W.* to come before you, and then and there examine him upon the interrogatories aforesaid, on his corporal oath first taken before you; and that you do take such his examination and depositions, and reduce them into writing on paper or parchment, and forthwith transmit the same, together with this writ, under the seal of your said court, to the said *C. S.* Witness (*name of the chief justice or chief baron,*) at Westminster, the — day of —, in the — year of our reign.

30. *Interrogatories thereon.*

Interrogatories to be administered to *W. W.*, a witness to be produced, sworn, and examined upon the part and behalf of *A. B.*, in a certain case now depending in the court of our lady the queen, before the queen herself, [*or in C. P.* "before the justices of our lady the queen," *or in Erch.* "before the barons of her majesty's Exchequer,"] at Westminster, between the said *A. B.* plaintiff and *C. D.* defendant, before the chief justice and other judges of the supreme court of judicature at Fort William, in Bengal, under and by virtue of a writ in the nature of a mandamus or commission issued in pursuance of a rule of the said court of [Queen's Bench] made on the — day of —, A. D. 1839, and directed to the said chief justice and other judges, commanding them to hold a court for the examination of the said *W. W.*, a witness on the part of the [plaintiff], and for receiving other proofs therein, pursuant to the statutes of the thirteenth year of the reign of King George the Third, c. 63, and the first year of his late majesty King William the Fourth, c. 22, and to perform all such other matters and things as by the said writ or commission are commanded to be performed.

First, &c. [*proceed as directed in the form of interrogatories, ante, 62.*]

SECTION VII.

THE NISI PRIUS RECORD.

1. *Nisi Prius Record in ordinary cases (a).*

[The placita formerly used are to be omitted.—Copy the issue to the end of the award of the venire, and proceed as follows:]

Afterwards on the (*teste of distringas or habeas corpora*) — day of — in the year —, the jury between the parties aforesaid is respited here until the (*return day of distringas or habeas corpora*) — day of —, unless the right honourable (*name of chief justice*), her majesty's chief justice assigned to hold pleas in the court of our said lady the queen, before the queen herself, [or in C.P. "unless — (*name of chief justice*) knight, her majesty's chief justice of the bench here," or in Exch. "unless (*name of chief baron*) chief baron of her said majesty's court of Exchequer," or if at the assizes, say, "unless her majesty's justices assigned to take the assizes in and for the county of —,"] shall first come on the — day of —, A.D. —, [*first day of sittings, or if at the assizes the commission day of the assizes, "at the Guildhall of the city of London," or if in Middlesex, "at Westminster-Hall, in the county of Middlesex," or if in the country, "at — (the place where the assizes are holden) in the said county,"*] according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear: therefore let the sheriff have the bodies of the said jurors accordingly. (b)

[See 1 Chit. Ar. Pr. 246.]

2. *Nisi Prius Record for a Trial in the County Palatine of Lancaster, in Q.B. or C.P.*

[Same as in the preceding form, to the end of the pleadings; but there is no Jurata entered on the Record; and it concludes with the award of a Mittimus, as in the issue, ante, 48.]

3. *Mittimus to a County Palatine (c).*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to our justices of our county palatine of Lancaster [or "Durham,"] greeting: The tenor of a certain record, in our court before us [or in C.P. "before our justices," or in the Exch. "before the barons of our Exchequer,"] at Westminster, between A.B. plaintiff and C.D. defendant, in an action of promises [or as the

(a) This is according to the form prescribed by the rules of H. T. 4 Will. 4.

(b) At the assizes the jurata in Q. B. before the recent rule of H.T. prescribing the form of the record, concluded with the following entry of the sciendum:—

"And be it known that the queen's writ on record was delivered to the

under-sheriff of the said county, on —, the — day of —, A.D. —, before our lady the queen at Westminster, to be executed according to law, at his peril." But since that rule and form given thereby this should be omitted.

(c) See the form of the award of the mittimus, ante, 48; and see as to Durham, 48, n. (b).

action is], we send you inclosed in these presents ; commanding you, that having inspected the same, by our writ under the seal of our said county palatine, you command the sheriff of the same county, that he cause twelve free and lawful men of the body of the same county palatine to come before you at your next general session of the assize there to be holden after this writ shall be delivered to you, qualified according to law, by whom the truth of the matter in question may be the better known and inquired into, and who are in nowise akin either to the said *A.B.* or to the said *C.D.*, to recognize and make a certain jury of the county between the said parties, in the action aforesaid, because as well the said *C.D.* as the said *A.B.*, between whom the matter in variance is, have put themselves upon that jury ; and also that you make such further process against the said jurors so to be impanelled between the said parties, as is in this behalf used and commonly made, according to the law and custom of the said county palatine, until the issue [or "issues"] aforesaid between the said parties shall be fully tried : And when the verification and issue [or "issues"] aforesaid shall have been there made and tried before you, then do you send the record of the plaint aforesaid, together with every thing that shall have been done before you thereupon, and also this writ, to us, [or in *C.P.* "to our justices," or in the *Exch.* "to the barons of our Exchequer,"] at Westminster, at a certain day which you shall appoint to the said parties to be in our said court here to hear judgment thereupon. Witness ——— (*name of chief justice or chief baron*), at Westminster, the ——— day of ———, in the ——— year of our reign.

[See 1 *Chit. Ar. Pr.* 247.]

4. *The like, after a Rule for a View by a Special Jury.*

[*Proceed as in the last, to these words, "until the issue aforesaid between the said parties shall be fully tried," and then proceed as follows :*] And that in this writ of venire facias, to be issued by you in this cause, there be contained a clause, commanding the sheriff of the said county palatine to have six or more of the first twelve of the jurors, so to be impanelled and returned, at the place in question, before the time of the trial of the said issue [or "issues,"] to wit, on the ——— day of ——— next ensuing ; and that ——— on the part of the said *A.B.*, and ——— on the part of the said *C.D.* shall attend the same day, and show the matters in question to the said six or more of the first twelve of the said jurors : And when the verification and issue [or "issues,"] aforesaid shall have been there made and tried, &c. [*conclude as in the last.*]

[See 1 *Chit. Ar. Pr.* 257.]

5. *Nisi Prius Record after Judgment for Plaintiff on Demurrer, where there are Issues in law and fact.*

[*Copy the issue to the end, and then proceed thus :*] But because the court here will advise amongst themselves what judgment to give in the premises, whereof the said parties have put themselves upon the judgment of the court before they give judgment thereon, a day is therefore given to the parties aforesaid to come here, on the ——— day of ———, in the year of our Lord ———, (*day of judgment on demurrer*) to hear judgment thereon, because the said court here are not fully advised thereon. On which day come here the parties aforesaid, by their attorneys, and thereupon all and singular the premises, whereof the said parties have put

themselves upon the judgment of the court, being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the pleas by the defendant [2dly and 3dly] above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law; wherefore the plaintiff ought to recover against the defendant his damages by reason of the said premises. But because it is unknown to the court here what damages the plaintiff hath sustained, by reason of the said premises, whereof the said parties put themselves upon the judgment of the court, and because it is convenient and necessary that there be but one taxation of damages in this suit; therefore let the giving of judgment in this behalf against the defendant be stayed until the trial of the said issue above joined between the parties to be tried by the country; and as well to try the said last-mentioned issue as to inquire what damages the plaintiff hath sustained on occasion of the premises, whereof the said parties put themselves upon the judgment of the court, the sheriff is commanded that he cause to come here on the — day of —, [or “forthwith”], twelve &c., by whom &c., and who neither &c., to recognize &c., because as well &c. Afterwards, on [&c. conclude with the jurata as in the form, ante, 66, No. 1.]

9. *Commission from the Exchequer for Trial of a Cause at the Assizes.*

[This commission is now rendered unnecessary by 2 & 3 Vic. c. 22.]

SECTION VIII.

THE JURY PROCESS.

1. *Venire Facias Juratores.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff [or “coroner”] of —, [or “to — and —, elisors duly appointed in this behalf;” see ante, 49,] greeting: We command you that you cause to come before us [or in C. P. “before our justices of the bench;” or in Exch. “before the barons of our Exchequer,”] at Westminster forthwith, on —, (*making the writ returnable on a particular day before the trial, (a)*) twelve good and lawful men of the body of your county, qualified according to law, by whom the truth of the matter may be the better known, and who are in nowise of kin either to A. B. the plaintiff, or to C. D. the defendant, to make a certain jury of the country between the parties aforesaid, in an action on promises, [or “of debt,” &c. as the action may be,] because as well the said C. D. as the said A. B., between whom the matter in variance is, have put themselves upon that jury; and have there then, [or in C. P. “have there,”] the names of the jurors, (in C. P. and Exch. omit

(a) By the 3 & 4 Will. 4, c. 67, s. 2, the venire may be returnable *forthwith* except in trials at bar; but ne-

vertheless a particular day must, it seems, be named in the venire. *Williams v. Calverly*, 14 Leg. Obs. 13.

the words "the names of the jurors,") and this writ, Witness (name of chief justice, or in the Exchequer of chief baron), at Westminster, the — day of —, (a) in the — year of our reign.

[See 1 Chit. Ar. Pr. 250.]

2. *The like, when one Defendant pleads, and another suffers Judgment by Default.*

[Proceed as *supra*, No. 1, to the words, "to make a certain jury of the country between the parties aforesaid," inclusive, and then thus:] as well to try the issue [or "issues"] joined between them in an action on promises, [or "of debt," &c. as the action may be,] as to inquire against the said E. F. what damages the said A. B. hath sustained, as well by reason of the not performing of certain promises of the said E. F. (as the action is) as for his costs and charges by him about his suit in this behalf expended; whereupon it hath been considered that the said A. B. ought to recover his damages against the said E. F., because as well the said C. D. as the said A. B. between whom [&c. conclude as in form, ante, 68, No. 1.]

3. *The like, where there are several Issues, some to be tried by the Country and others by the Record.*

[Proceed as ante, 68, No. 1, to the words, "to make a certain jury of the country between the parties aforesaid," inclusive, and then thus:] as well to try the issue [or "issues"] joined between them, to be tried by the country, in an action on promises, [or "of debt" &c. as the action is,] as to inquire what damages the said A. B. hath sustained on occasion of the premises, whereupon the said other issue [or "issues"] is [or "are"] above joined between the parties aforesaid, to be tried by the record, in case the said last-mentioned issue [or "issues"] shall happen to be found for the said A. B., because as well [&c. conclude as in the form, *supra*, No. 1.]

4. *The like, where there are several Issues in Fact and in Law, and the Jury are to assess contingent Damages on the latter. (b)*

[Proceed as in the writ, ante, 68, No. 1, to the words "to make a certain jury of the country between the parties aforesaid," inclusive, and then thus:] as well to try the issue [or "issues"] joined between them, to be tried by the country in an action on promises, [or "of debt," or as the action is,] as to inquire what damages the said A. B. hath sustained on occasion of the premises, whereof the said parties have put themselves upon the judgment of the court, if judgment shall happen to be given thereupon for the said A. B. against the said C. D.; because as well [&c. conclude as in the form, ante, 68, No. 1.]

(a) By the 3 & 4 Will. 4, c. 67, s. 2, it may be tested on the day on which it is issued, whether in term or vacation, except in trials at bar. Formerly it must have been tested in term, and it must be so now in trials

at bar.

(b) This is necessary even where the issues of law and fact arise out of the same count, *Codrington v. Lloyd*, 1 P. & D. 157.

5. *The like, when Breaches are suggested in Debt in Bond after Plea pleaded, on 8 & 9 Will. 3, c. 11, sec. 8.(a).*

[*Proceed as in the writs, ante, 68, No. 1 and 2 respectively, to the words "to make a certain jury of the country between the parties aforesaid," inclusive, and then thus:*] as well to try the issue joined between them in an action of debt upon a certain writing obligatory, as also, in case the said issue shall be found for the said *A. B.*, to inquire of the truth of the breach [or "breaches"] of the condition of the said writing obligatory, suggested by the said *A. B.*, and to assess the damages sustained thereby; because as well [*&c. conclude as in the form, ante, 68, No. 1.*]

6. *Venire Facias de novo.*

Victoria [*&c. as ante, 68, No. 1,*] to the sheriff of — greeting: We command you, that you cause to come anew before [*&c. conclude us in a common venire as ante, 124, No. 1.*]

[*See 1 Chit. Ar. Pr. 257.*]

7. *Distringas Juratores, in Q. B.*

Victoria [*&c. as ante, 68, No. 1,*] to the sheriff of —, greeting: We command you, that you distrain the several persons named in the panel hereunto annexed, [*or if it be a special jury, "that you distrain S. P. of —, T. P. of —," &c. naming them as in the master's list,*] jurors summoned in our court before us, between *A. B.* plaintiff and *C. D.* defendant, by all their chattels in your bailiwick, so that neither they, nor any one by them, do lay hands on the same, until you shall have another command from us in that behalf; and that you answer to us for the issues of the same, so that you have their bodies before us at Westminster, on —, (*making the distringas returnable on the first day in term after the trial,*) or before our right trusty and well beloved (*the name of chief justice,*) our chief justice assigned to hold pleas in our court before us, if he shall first come, on — the — day of —, (*the day of trial,*) at the Guildhall of the city of London aforesaid, [*or if in Middlesex, "at Westminster Hall, in the county of Middlesex aforesaid," or if at the assizes, "before our justices assigned to take the assizes in your said county, if they shall first come, on — (the commission day of the assizes,) at —, (the place where the assizes are holden,) in your said county,"*] according to the form of the statute in such case made and provided, to make a certain jury between the said parties in an action on promises, [*or "of debt," or as the action is,*] and to hear their judgment thereupon of many defaults; and have there then the names of the jurors, and this writ. Witness — (*name of chief justice,*) at Westminster, the — day of —, (*b*) in the — year of our reign.

[*See 1 Chit. Ar. Pr. 251.*]

8. *Habeas Corpora Juratorum, in C. P.*

Victoria [*&c. as ante, 68, No. 1,*] to the sheriff of —, greeting:

(a) The common venire is sufficient for this purpose where the breaches are inserted in the declaration or replication, *Quinn v. King*, 1 M. & W. 42; *Scott v. Staley*, 4 Bing. N. C. 724.

(b) By the 3 & 4 W. 4, c. 67, s. 2,

this teste may be a day subsequent to the teste of the venire facias, whether in term or in vacation. Formerly it must have been on the return day of the venire facias.

We command you, that you have before our justices at Westminster, on — (the first day in term after the trial,) or before the right honourable (the name of the chief justice,) our chief justice assigned to hold pleas in our court of the Bench, by force of the statute in such case made and provided, if he shall first come, on — the — day of —, (the day of trial,) at the Guildhall of the city of London, [or if in Middlesex, "at Westminster Hall, in your county," or if at the assizes, "before our justices assigned to take the assizes in your county, if they shall first come, on — the — day of —, (the commission day of the assizes,) at — (the place where the assizes are holden,) in your said county,"] the bodies of the several persons named in the panel annexed to this writ, [or if a special jury, "the bodies of S. P. of —, T. R. of —," &c. naming them as in the master's paper,] jurors summoned in our court, before our justices at Westminster, between A. B. plaintiff and C. D. defendant, in an action on promises, [or "of debt," or as the plea may be,] to make that jury; and have there this writ. Witness — (the name of the chief justice) at Westminster, the — day of —, (a) in the — year of our reign.

[See 1 Chit. Ar. Pr. 251.]

9. *Distringas Juratores, in Exchequer.*

Victoria [&c. as ante, 68, No. 1,] to the sheriff of —, greeting: We command you, that you distrain the several persons named in the panel hereunto annexed, [or if a special jury, "that you distrain S. P. of —, T. P. of —," &c. naming them as in the master's list,] by all their chattels in your bailiwick, so that neither they, nor any one by them, do lay hands on the same, until we shall command you otherwise therein, and that you answer to us for the issues of the same, so that you have their bodies before the barons of our Exchequer at Westminster, on — next coming, unless our trusty and well-beloved (name of chief baron,) chief baron of our said Exchequer, according to the form of the statute in such case made and provided, on —, the — day of —, next coming (the day of the sittings), at the Guildhall of the city of London, [or if in Middlesex, "at Westminster aforesaid, in the county of Middlesex," or if at the assizes, "unless our justices assigned to hold the assize in your county, according to the form of the statute in such case made and provided, on —, the — day of — next coming, (the commission day of the assizes,) at — in your county,"] first shall come, to make a certain jury between A. B. plaintiff and C. D. defendant, in an action on promises, [or "of debt," &c. as the action is,] wherein the parties aforesaid have put themselves upon the inquest of the country, as in the plea thereupon had at our said Exchequer is more fully contained; and have you there then the names of the jury aforesaid, and this writ. Witness (name of chief baron,) at Westminster, the — day of —, (a) in the — year of our reign. Rose.

10. *Rule for Special Jury.*

In the Q. B. [or "C. P.," or "Exch. of Pleas."]

— Term, — Victoria.

B. } It is ordered that the sheriff [or "sheriffs"] of the county [or
v. } "city"] of — shall, at the expense of the plaintiff, [or "defend-
D. } ant,"] upon notice of this rule to be given to his under-sheriff, [or

(a) See ante 68, note (a).

in London, "to be given to their secondaries,"] attend one of the masters with the jurors' book and special jurors' list for the said county, [or "city,"] pursuant to the statute in that case made and provided, and the numbers referring to the names on such list, written on distinct pieces of parchment or card, as required by the said statute; and that such master shall, pursuant to the said statute, nominate thereout forty-eight persons, being qualified to serve on special juries for the said county [or "city,"] of whom twelve shall be struck out on each side, and the remaining twenty-four shall be returned by the said sheriff [or "sheriffs"] to try the issue [or "issues"] joined between the parties. Upon the motion of Mr. ——. By the Court.

[See 1 Chit. Ar. Pr. 253.]

11. *Rule for a View, by a Common Jury, in Q. B.*

In the Queen's Bench.

On the — day of —, in the — year of the reign of Queen Victoria.

B. } It is ordered, that a writ of *distringas juratores* issue, directed to
v. } the sheriff of the county of —, in which shall be contained a
D. } clause, commanding the said sheriff to have six or some greater number of the jurors to be impanelled and returned to try the issue between the parties, who shall be mutually consented to by the said parties or their agents, at the place in question, before the time of the trial of the said issue, to wit, upon — the — day of —; and that — on the part of the plaintiff, and — on the part of the defendant, shall attend the same day, and show the matters in question to the said six or some greater number of the said jurors, who shall be consented to as aforesaid; and no evidence shall be given on either side at the time of taking thereof: And it is further ordered, that the plaintiff [or "defendant,"] his attorney or agent, shall deposit in the hands of the under-sheriff of the said county the sum of £—, for payment of the expenses of the same view, pursuant to the statute of the sixth year of King George the Fourth, chap. 30, sec. 23, and the rule of this court, made in Trinity term, in the seventh year of King George the Fourth; and if such sum shall be more than sufficient to pay the expenses of the said view the surplus shall be forthwith returned to the plaintiff's [or "defendant's"] attorney; and if such sum shall not be sufficient to pay such expenses, the deficiency shall be forthwith paid by the said plaintiff's [or "defendant's"] attorney, to the said under sheriff: the plaintiff [or "defendant"] hereby consenting, that in case no view shall be had, or if a view shall be had by any of the said jurors, whether they shall happen to be six, or any particular number of the jurors who shall be so mutually consented to as aforesaid, yet the said trial shall proceed, and no objection shall be made on account thereof, or for want of a proper return to the said writ. Upon the motion of Mr. —. By the Court.

[See 1 Chit. Ar. Pr. 257.]

12. *The like, by a Special Jury, in Q. B.*

In the Queen's Bench.

On the — day of —, in the — year of the reign of Queen Victoria.

B. } It is ordered, that a writ of *distringas juratores* issue, directed to
v. } the sheriff of the county of —, in which shall be contained a
D. } clause, commanding the said sheriff to have six or more of the first

twelve of the jurors to be impanelled and returned to try the issue between the parties, at the place in question, before the time of the trial of the said issue, to wit, upon — the — day of —, at — o'clock in the forenoon of the same day; and that — on the part of the plaintiff, and — on the part of the defendant, shall attend the same day, and show the matters in question to the said six or more of the first twelve of the said jurors; and no evidence shall be given on either side at the time of taking thereof: And it is further ordered, that the plaintiff's [or "defendant's"] attorney or agent, shall deposit, [*&c. as in the preceding form,*] the plaintiff [or "defendant"] hereby consenting that in case no view shall be had, or if a view shall be had by any of the said jurors, whether they shall happen to be any of the twelve jurors who shall be first named in the said writ or not, yet the said trial shall proceed, and no objection shall be made on account thereof, or for want of a proper return to the said writ. Upon the motion of Mr. —.

By the Court.

[See 1 Chit. Ar. Pr. 257.]

13. *Distringus Juratores, when a View is to be had by a Common Jury, in Q. B.*

Victoria [*&c. as ante, 70, No. 7,*] to the sheriff of —, greeting: We command you, [*&c. proceed as in a common distringas, ante, 70, to the words, "many defaults," and then thus:*] and in the meantime, according to the forms of the statute in such case made and provided, we command you, that you have six or some greater number of the said jurors, who shall be mutually consented to by the said A. B. and C. D., or their agents, to take a view of the place in question, on — the — day of —; and that the same jurors meet on the same day, at the house of —, in your county, and proceed from thence to view the said place, in the presence of — on the part of the plaintiff, and — on the part of the defendant, appointed by our court before us to show the said place to such of the said jurors as shall come to view the same; and in what manner you shall have executed this our command make appear to us at Westminster on the said day, and have there then this writ. Witness (*name of chief justice*) at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 256.]

14. *The like, by a Special Jury in Q. B.*

[*Commence as in the preceding form,*] "and in the meantime, according to the form of the statute in such case made and provided, we command you, that you have six or more of the first twelve of the said jurors, to take a view of the place in question, on — the — day of —; and that the same jurors meet" [*&c. conclude as in the preceding form.*]

[See 1 Chit. Ar. Pr. 256.]

15. *Rule for a View in C. P.*

In the Common Pleas.

On the — day of —, in the — year of the reign of Queen Victoria.

B. } Upon reading the affidavit of P. A. gentleman, it is ordered, at
v. } the instance of the plaintiff, that a special writ of habeas corpora
D. } juratorum, directed to the sheriff of —, according to the form of

the statute in that case made and provided, shall issue, by which the said sheriff shall cause the place in question to be shown to six or more of the jury, impanelled and returned to try the issue between the said parties, or as many more of them as he shall think fit, to take a view of the place in question, on — the — day of — next, at — of the clock in the forenoon of the same day; which said jurors shall meet at the house of S. P. known by the name or sign of —, in —, who shall then and there be refreshed, at the equal charge of the said parties; and that — on the part of the plaintiff, and — on the part of the defendant, named in the said writ, shall show the place in question to those jurors: but that no evidence shall be then and there given to the said jurors; and the sheriff of — shall, by a special return upon the said writ, certify to the justices of assize that the said view was had, according to the command of the said writ.

By the Court.

On the motion of Mr. — for the plaintiff.

16. *Habeas Corpora Juratorum thereon.*

[*Proceed as in the form, ante, 70, No. 8, to the words "to make that jury," and then thus:*] and in the meantime, according to the form of the statute in such case made and provided, we command you, that you have six of the first twelve of the said jurors, or as many more of them as you shall think fit, to take a view of the place in question, on —, at —, (*see the rule*) in your county, and proceed from thence to view the said place, in the presence of — on the part of the plaintiff, and — on the part of the defendant, appointed by our court of the bench to show the said place to such of the jurors as shall come to view the same; and that you make appear to our said justices at Westminster, on the said day, in what manner you shall have executed this our writ; and that you have there this writ. Witness sir — (*name of chief justice*) knight, at Westminster, the — day of —, in the — year of our reign.

17. *Rule for a View by a Special Jury, in the Exchequer.*

On the — day of —, in the — year of the
reign of Queen Victoria.

B. } Upon the motion of Mr. —, of counsel for the plaintiff, [*or*
v. } "*defendant,*"] it is ordered, that a special writ of *distringas jura-*
D. } *tores* for impanelling a jury shall issue in this cause, directed to the
sheriff of —, commanding that the aforesaid sheriff have six or more
of the first twelve jurors impanelled to try the issue between the said parties, according to the form of the statute in that case made and provided, to view the place in question between the parties aforesaid, on — the — day of — next coming; which said jurors shall meet at the house of S. P., known by the name or sign of —, in the town of —, in the county of —, at — of the clock in the forenoon of the same day, and there shall be refreshed at the equal charge of the parties aforesaid; and that J. J. on the behalf of the said plaintiff, and S. J. on behalf of the said defendant, shall show the place in question and dispute between the said parties to those jurors; but no evidence shall then and there be given them thereon in any sort; and that the same jurors, who shall view the place in question as aforesaid, and appear, shall, before any drawing, be first sworn upon the jury for the trial of this cause.

By the Court.

ROSE.

18. *Distringas Juratores thereon.*

Victoria [&c. as ante, 68, No. 1,] to the sheriff of —, greeting: We command you [&c. proceed as in the form, ante, 71, No. 9, to the words "more fully contained," and then thus:] We also command you, that you distrain six or more of the first twelve of the jury aforesaid, to view the place in question, between the parties aforesaid, on —, which said jurors shall meet at the house of S. P., known by the name or sign of —, in the town of —, in the county of —, at — of the clock in the forenoon of the same day, and there shall be refreshed at the equal charge of the parties aforesaid, and that — on the behalf of the said plaintiff, and — on the behalf of the said defendant, shall show the place in question to these jurors; but no evidence shall then and there be given them; and have you there then the names of the jury aforesaid, and this writ. Witness sir — (name of chief baron) knight, at Westminster, the — day of —, in the — year of our reign.

ROSE.

SECTION IX.

ENTRY OF THE CAUSE FOR TRIAL.

[See 1 Chit. Ar. Pr. 258, and the rule T.T. 1 Will. 4, id. 143, and vol. 2, Book 4, Part 1, Chap. 15, which requires that a copy of the particulars of plaintiff's demand, and also the particulars (if any) of the defendant's set-off, shall be annexed by the plaintiff's attorney to every record at the time it is entered with the marshal.]

SECTION X.

THE BRIEF.

General Form of.

[Insert the title of the Court in which the cause is pending, at the top, beginning in the margin, and in a large round hand.]

Between { A.B. plaintiff,
and
C.D. defendant.

Venue in the margin. Declaration states that [here state the declaration. State the damage thus:]

To the plaintiff's damage of £—.

Plea [in the margin.] [Here copy the plea, and every separate pleading is to be thus distinguished, as]

Replication [in the margin.] [Here copy the replication, then say,]

CASE.

[Here insert the narrative of the case, after which say,

Proofs.

To prove that [*here insert the facts as they are to be proved, and say, [call* { [*The name and description, and if the case depend upon testimony of ancient people, add the age of the witness.*

[*Fold the brief longways, and indorse the same with the name of the court, venue, and the parties' name for whom the brief is delivered, counsels' names, the counsel for whom the brief is intended first, with the fee opposite his name, thus :*]

[*Court.*]

[*Venue*]

Doe
v.
Roe. } Brief.

For the — [whether plaintiff or defendant.]

Mr. T. A. James — guineas.

[*The name or names of the other counsel*] with you.

[*The time and place of trial.*]

[*If a consultation be to take place, here state when, where, and with whom.*] Consultation fee, — guineas.

[*Name and address of the attorney or agent.*]

CHAPTER III.

PROCEEDINGS FROM THE TRIAL TO THE VERDICT, INCLUSIVE.

SECTION I.

TRIAL AT BAR.

1. *Rule for Trial at Bar, in Q. B.*

On the — day of —, in the year of our Lord 1839.

B. } Upon reading the rule made in this cause on —, and hearing
v. } Mr. —, of counsel for the defendant, and Mr. —, of counsel
D. } for the plaintiff; it is ordered, that the trial of this cause be had at
the bar of this court, on —, the — day of — now next ensuing.
By the Court.

[See 1 Chit. Ar. Pr. 258.]

2. *Notice of Trial at Bar.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that this cause will be tried at the bar of the court, on
—, at Westminster Hall, in the county of Middlesex. Dated this —
day of —, 1839. Yours, &c.

To Mr. D. A. defendant's attorney,
[or "agent."]

P. A. plaintiff's attorney,
[or "agent."]

[See 1 Chit. Ar. Pr. 263.]

3. *Entry of Verdict, on a Trial at Bar, in Q. B.*

[After the award of the venire facias, proceed thus:] From which day
the jury aforesaid, between the parties aforesaid, of the plea aforesaid, was
respite thereupon between them, before our lady the queen at Westmin-
ster, until — then next following, for default of the jurors, &c. At
which day, before our said lady the queen at Westminster, come the
parties aforesaid, by their attorneys aforesaid; and the jurors of that jury,
being summoned, also come, who to speak the truth of the premises, being
chosen, tried, and sworn, say upon their oath, [&c. stating the verdict.]

SECTION II.

TRIAL AT NISI PRIUS.

For forms as to challenging the jury, see *post*, 84. Pleas puis darrein
continuance, *post*, 83. Bills of exceptions, *post*, 86. Demurrers to
evidence, *post*, 85. Nonsuit, *post*, 87. Verdict, *post*, 89.

[See 1 Chit. Ar. Pr. 264 to 291.]

1. *Postea when a Juror is withdrawn.*

Afterwards, that is to say, on the day and at the place within contained, before the right honourable —— (*the name of the chief justice, or in Exchequer the name of the chief baron,*) within mentioned, ——, esquire, being associated to the said chief justice [*or "chief baron," or, in country causes, "before sir ——, knight, one of the justices of our lady the queen assigned to hold pleas before the queen herself, and sir ——, knight, one of the justices of our lady the queen of the bench," or "sir ——, knight, one of the barons of the Exchequer of our lady the queen"*] according to the form of the statute in such case made and provided, come as well the within-named plaintiff as the within-named defendant, by their respective attornies within mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within contained, are chosen, tried, and sworn; whereupon, for certain causes moving as well the said chief justice [*or, "chief baron," or "justices," or "barons,"*] as the within-named plaintiff and defendant, J.J., one of the jurors of the jury aforesaid, is withdrawn from the panel thereof, and the rest of the jurors of the jury aforesaid are altogether discharged from giving any verdict of and upon the premises within mentioned, &c.

[See 1 Chit. Ar. Pr. 285.]

2. *Judgment thereon.(a)*

[Commence the entry of the judgment as in other cases; see form, post, Chap. 5, s. 2; and after proceeding to the end of the *postea*, state the judgment thus:] Therefore it is considered that the plaintiff take nothing by the said writ, and that the defendant go thereof without day, &c.

SECTION III.

TRIAL BEFORE THE SHERIFF UNDER THE 3 & 4 WILL. 4, c. 42, s. 17.

1. *Affidavit to obtain Rule or Order for the Writ of Trial.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

A. B. plaintiff v. C. D. defendant.

P. A. of ——, gentleman, attorney for the above-named plaintiff, maketh oath and saith, that this action is brought to recover a debt due to the above-named plaintiff, and that the sum sought to be recovered and indorsed on the writ of *summons* in this action, does not exceed *twenty* pounds. And this deponent further saith, that issue has [*or "issues have"*] been joined in the said action, and that the trial will not, as this deponent verily believes, involve any difficult question of fact or law.

Sworn, [&c. (b).]

P. A.

[See 1 Chit. Ar. Pr. 292.]

(a) As to when withdrawing a juror determines the action see *Harries v. Thomas*, 2 M. & W. 32, from which it would seem that judgment is not a

necessary consequence of such withdrawal.

(b) See Index, title "*Jurat.*"

2. *Rule Nisi in Q. B. or Exchequer, to have the Issue tried before the Sheriff, &c.*

On the — day of —, A. D. —.

B. } Upon reading the affidavit of the plaintiff [or "P. A."] it is
v. } ordered, that the defendant, upon notice of this rule to be given to
D. } him [or, where he has appeared by attorney, "to his attorney or
agent"] shall upon — next show cause why the issue [or "issues"]
joined in this cause should not be tried before the sheriff of — [or
"before the judge of the court of —, in the county of —,"] and why
a writ should not issue directed to the said sheriff [or "judge"] com-
manding him to summon a jury to try such issue [or "issues,"] and to
return the same to the court on some day certain, to be named in such
writ, together with the finding of the jury indorsed thereon, pursuant to
the statute of 3 & 4 Will. 4, c. 42. On the motion of Mr. —.

By the Court.

3. *The like, in C. P.*

On —, the — day of —, A. D. —.

B. } Upon reading the affidavit of the plaintiff [or "P. A."] it is
v. } ordered, that the defendant, upon notice of this rule to be given to
D. } him [or "his attorney or agent"] shall show cause to this court to-
morrow peremptorily, before the rising of the court, otherwise this rule
shall be then absolute, why the issue [&c. conclude as in the preceding
form.]

4. *Affidavit of Service of Rule.*

[See the usual form, post.]

5. *Judge's Order for the Trial.*

B. } Upon [reading the affidavit of P. A. and] hearing the attornies or
v. } agents on both sides, I do order that a writ issue out of her majesty's
D. } court of —, directed to the sheriff of —, commanding him to
summon a jury to try the issue joined herein, and that the said sheriff re-
turn such writ, with the finding of the jury indorsed thereon, to the said
court, on a day certain to be named in such writ, pursuant to the statute.
Dated the — day of —, A. D. —.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 293.]

6. *The Issue, when it is directed to be tried by the Sheriff(a).*

[After the joinder of issue proceed as follows:] And forasmuch as the
sum sought to be recovered in this suit, and indorsed on the said writ of
summons, does not exceed £20, hereupon on the (teste of writ of trial)
day of —, in the year —, pursuant to the statute in that case made
and provided, the sheriff [or, "the judge of —, being a court of record
for the recovery of debt in the said county," as the case may be,] is com-

(a) This form is prescribed by the recent rules of H. T. 4 W. 4. If omitted or curtailed, judgment may be arrested, *Handford v. Handford*, 6 Dowl. 473.

manded that he summon twelve &c., who neither &c., who shall be sworn truly to try the issue above joined between the parties aforesaid, and that he proceed to try such issue accordingly; and when the same shall have been tried that he make known to the court here what shall have been done by virtue of the writ of our lady the queen to him in that behalf directed, with the finding of the jury thereon indorsed on the — day of —, &c.

[See 1 Chit. Ar. Pr. 295.]

7. Writ of Trial(a).

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of our county of —, [or “to the judge of —, being a court of record for the recovery of debt in our county of —,” as the case may be.] Whereas A. B., in our court before us at Westminster, [or “in our court before our justices at Westminster,” or “in our court before the barons of our Exchequer at Westminster,” as the case may be,] on the (date of first writ of summons)(b) day of — last impleaded (c) C. D. in an action on promises (or as the case may be); for that whereas one, &c. [here recite the declaration as in a writ of inquiry], and thereupon he brought suit. And whereas the defendant, on the (date of plea) day of —, last, by — his attorney, (or as the case may be,) came into our said court and said (here recite the pleas and pleadings to the joinder of issue), and the plaintiff [or “defendant,” as the case may be] did the like. And whereas the sum sought to be recovered in the said action, and indorsed on the writ of summons therein, does not exceed £20; and it is fitting that the issue above joined should be tried before you the said sheriff of —, [or “judge,” as the case may be]: we therefore, pursuant to the statute in such case made and provided, command you that you do summon twelve free and lawful men of your county duly qualified according to law, who are in nowise akin to the plaintiff or to the defendant, who shall be sworn truly to try the said issues joined between the parties aforesaid, and that you proceed to try such issue accordingly; and when the same shall have been tried in manner aforesaid, we command you that you make known to us at Westminster, [or “to our justices at Westminster,” or “to the barons of our said Exchequer,” as the case may be,] what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed, on the — day of — next. Witness, (name of chief justice, if the action is in Q. B. or C. P., or of the chief baron if in the Exch.,) at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 293, 294.]

8. Indorsement on Writ of Trial, before Delivery to the Sheriff.

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

B. } Writ of Trial.—To be tried at the Secondaries Office, 5, Basing-
v. } hall Street, London, [if in London; or if in Middlesex, “at the
D. } house known by the name of the sheriff’s office in Red Lion

(a) This form is prescribed by the rule of H. T. 4 W. 4. It must not be curtailed, *Handford v. Handford*, 6 Dowl. 473.

(b) See *White v. Farrar*, 2 M. & Wels. 288; 5 Dowl. 463, S. C.;

Farwig v. Cockerton, 6 Dowl. 337; *Blissett v. Tenant*, 6 Dowl. 436; 1 Chit. Ar. Pr. 294.

(c) Impleaded means that the action was commenced, *Robinson v. Rowland*, 6 Dowl. 271.

Square;" or if in the country "at the house of —, commonly called or known by the name or sign of —, in — street, at —, in the county of —,"] on the — day of —, 18—, at — of the clock precisely.

P. A. plaintiff's attorney, [or "agent"] of (*stating his residence.*)

9. *Deputation from the Sheriff to try the Cause.*

— to wit. *P. S.* sheriff of the said county, to *T. W.*, gentleman, my deputy for this purpose only, greeting: By virtue of a writ of trial issuing out of her majesty's court of *Q. B.* [or "*C. P.*" or "*Exch.*"] at Westminster, to me directed and hereto annexed; I do hereby authorise and empower you to summon a jury, and in my name try the issue joined in a cause wherein *S. R.* is the plaintiff and *S. L.* the defendant, and render me an account of what you shall do herein, so that I may certify the same to our lady the queen, [or if in *C. P.* "to the justices of our lady the queen of the bench," or if in *Exch.* "to the barons of her majesty's Exchequer,"] at Westminster, on the — day of — instant. Hereof fail not. Given under the seal of my office, this — day of —, A. D. 1839.

By the Sheriff.

This deputation to be indorsed and returned with the writ.

10. *Return thereto.*

The execution of this deputation appears in a certain inquisition hereto annexed.

T. W. deputy sheriff.

11. *Notice of Trial.*

In the *Q. B.* [or "*C. P.*" or "*Exch. of Pleas.*"]

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice, that the issue joined in this cause will, pursuant to the statute 3 & 4 Will. 4, c. 42, ss. 17 and 18, and the order of the Honourable [Mr. Baron Maule,] made on the — day of — instant, in this cause, be tried before the [sheriff of Middlesex,] on — the — day of — next, at eleven o'clock in the forenoon precisely, at the [sheriff of Middlesex office, Red Lion Square, Holborn, in the said county of Middlesex,] [and if the plaintiff mean to attend by counsel, add, "when and where counsel will attend on behalf of the said plaintiff."] Dated the — day of —, 18—. Yours, &c.

P. A. plaintiff's attorney [or "agent."]

To Mr. *C. D.* the above-named defendant, [or if he has appeared by attorney, "to Mr. *D.*

A. defendant's attorney" or "agent."]

[See the other forms of Notices of Trial at *Nisi Prius*, ante, 50, and of Notices of Inquiry, post; also of Notice of Countermand, ante, 52.]

12. *Præcipe for Subpœna.*

See the form, ante, 54.

13. *Subpœna.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to *W. W.* [&c. *insert the names of the witnesses*], greeting: We command you, and every of you, that all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before our sheriff [or "sheriffs"] of our county of —, by — of the clock in — noon of the same day, to testify the truth, according to your knowledge, in a certain cause now in our court before us, [or in *C. P.* "before our justices," or in *Exch.* "before the barons of our court of Exchequer,"] depending between *A. B.* plaintiff and *C. D.* defendant, in an action on promises (or as the action is) on the part of the plaintiff [or "defendant,"] on which our certain writ of trial has been sent by — out of our said court, and directed to the said sheriff, under the statute of 3 & 4 Will. 4, c. 42, and then and there in due form of law to be executed before the said sheriff. And this you, nor any of you, shall in nowise omit, under a penalty of every of you of one hundred pounds. Witness — (*name of chief justice, or in Exchequer, of chief baron,*) at Westminster, the — day of —, in the — year of our reign.

[See 1 *Chit. Ar. Pr.* 295.]

14. *Indorsement on the Writ of Trial of the Verdict (a).*

Afterwards, on the (*day of trial*) day of —, in the year —, before me, sheriff of the county of —, [or "judge of the court of —,"] came as well the within-named plaintiff as the within-named defendant, by their respective attornies within named, (or as the case may be), and the jurors of the jury by me duly summoned, as within commanded, also came, and being duly sworn to try the said issue within mentioned on their oath, said, that [&c. *here state the finding of the jury as in other cases on trials at Nisi Prius.* See the forms, post, 92, et seq.]

The answer of S. S. sheriff.

15. *The like, in case a Nonsuit takes place (b).*

[*Proceed as the above form, but after the words "duly sworn to try the issue within mentioned," proceed as follows:*] And were ready to give their verdict in that behalf; but the said *A. B.* being solemnly called, came not, nor did he further prosecute his said suit against the said *C. D.*

16. *Under-sheriff's Certificate to be indorsed on the Writ of Trial, that Judgment ought to be stayed, &c. (c).*

I certify that judgment ought not to be signed in this cause until the within-named defendant shall have had an opportunity to apply to the court for a new trial.

[*Signature of the under-sheriff, &c.*]

[See 1 *Chit. Ar. Pr.* 296.]

(a) This form is, for the most part, prescribed by the R. H. 4 W. 4.

(b) This form is prescribed by the R. H. 4 W. 4.

(c) See a form of affidavit, in order

to induce the sheriff to grant this certificate, *Chit. Sum. Prac.* 358; but which it seems is not absolutely necessary.

17. *Summons for staying Judgment, &c. on the Writ.*

B. } Let the plaintiff's attorney or agent attend me at my chambers
v. } in Rolls' Garden, on the morrow, at — of the clock in the —,
D. } to show cause why the judgment, [or " execution on the judgment,"] on the finding of the jury on the trial of this cause, should not be stayed until the — day of next — term, or until such day as may be ordered on the hearing of this summons. Dated this — day of —, A. D. 1839. [Judge's name.]

18. *Order thereon.*

B. } Upon hearing the attornies [or " agents"] on both sides, I do
v. } order that the judgment [or " execution on the judgment"] on the
D. } finding of the jury on the trial of this cause shall be stayed until the — day of next — term. Dated the — day of —, A. D. 1839. [Judge's signature.]

[See 1 Chit. Ar. Pr. 296.]

19. *Judgment for the Plaintiff after Trial by the Sheriff (a).*

[Copy the issue, and then proceed as follows:] Afterwards, on the (day of signing judgment) day of —, in the year —, came the parties aforesaid, by their respective attornies aforesaid, (as the case may be), and the said sheriff, [or " judge," as the case may be], before whom the said issue came on to be tried, hath sent hither the said last-mentioned writ, with an indorsement thereon, which said indorsement is in these words: to wit, [copy the indorsement.] Therefore it is considered, &c. [in the same form as in ordinary cases, see the forms, post, 310.]

20. *Execution.*

[The same as in ordinary cases, see the forms, post.]

SECTION IV.

PLEAS PUIS DARREIN CONTINUANCE.

1. *Plea in Bar, Puis Darrein Continuance (b).*

In the Q. B. [or " C. P." or " Exch. of Pleas."]

On the — day of —, A. D. 1839.

B. } And the defendant by — his attorney saith, that the plaintiff
as } ought not further to maintain his aforesaid action against him: Be-
D. } cause he says, that after the last pleading in this action [or if the
matter of the defence arose after the issuing of the jury process, say, " after the issuing of the jury process in this action,"] and before this day, to wit, on the — day of —, in the year of our Lord —, [here state the subject-matter of the defence]. And this the defendant is ready to

(a) This form is prescribed by R. H. 4 W. 4.

plea, see *Dudden v. Triquet*, 4 M. & W. 676; 7 Dowl. 171; S. C. 1 Chit. Ar. Pr. 299.

(b) As to the time of pleading this

verify; wherefore he prays judgment, if the plaintiff ought further to maintain his aforesaid action against him, &c.

[Counsel's signature.]
[See 1 Chit. Ar. Pr. 299.]

2. *Plea in Abatement of Coverture of Plaintiff, Puis Darrein Continuance.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. 1839.

D. } And the defendant, by — his attorney, prays judgment of the
ats } said writ of the plaintiff, and that the same may be quashed; be-
, B. } cause he says, that after the last pleading in this action [or if the
matter of the defence arose after the issuing of the jury process, say, "after
the issuing of the jury process in this action,"] and before this day, that
is to say, on the — day of —, in the year of our Lord 1839, the
plaintiff intermarried with one G. G., who is still living: And this the
defendant is ready to verify; wherefore he prays judgment of the writ
aforesaid, and that the same may be quashed, &c.

[Counsel's signature.]
[See 2 Chit. Ar. Pr. Book 3, Part 2, Ch. 2, s. 8.]

3. *Affidavit of Truth of Plea Puis Darrein Continuance.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff v. C. D. defendant.

C. D. of —, —, the above-named defendant, maketh oath and
saith, that the plea hereunto annexed is true in substance and matter of
fact, and that the matter thereof arose within eight days next before the
(date of plea) — day of —, A. D. 1839 (a).

Sworn [&c. (b)]

C. D.

[See 1 Chit. Ar. Pr. 300, 301.]

SECTION V.

AUDITA QUERELA.

[See a form 2 Saund. 137 (e).]

SECTION VI.

JURY.

1. *Challenge to the Array.*

B. } And now at this day, to wit, on —, come as well the plaintiff
v. } as the defendant, by their respective attornies aforesaid; and the
D. } jurors of the jury impanelled also come. And hereupon the [de-
fendant] challengeth the array of the said panel: because he saith that
[here state the matter of challenge with certainty and precision]: And
this he is ready to verify; wherefore he prayeth judgment, and that the
said panel may be quashed.

[Counsel's signature.]
[See 1 Chit. Ar. Pr. 305.]

(a) See as to this affidavit when
the last day of pleading is Sunday,
&c., *Dudden v. Triquet*, 4 M. & W.

676; 7 Dowl. 171; S.C. 1 Chit. Ar.
Pr. 299.

(b) See Index, tit. "Jurat."

SECTION VII.

DEMURRER TO EVIDENCE.—BILL OF EXCEPTIONS.

1. *Demurrer to Evidence when the Jury are Discharged.*

B. } Afterwards, that is to say, on the day and at the place within con-
 v. } tained, before [*&c. proceed as in the postea, post, 92, to the asterisk **,
 D. } *and then thus, according to the issue to be tried:*] the defendant
 shows in evidence to the jury aforesaid, to prove and maintain the said
 issue within joined upon his part, by A. B. a witness duly sworn in that
 behalf, that [*here state the evidence demurred to, a note of which is usually
 taken at the trial by the associate, and signed by the counsel.*] And the
 plaintiff says that the matter aforesaid, to the jurors aforesaid, in form
 aforesaid, shown in evidence by the defendant, is not sufficient in
 law to maintain the said issue on the part of the defendant, and that
 the plaintiff is not bound by law to answer the same; and this he is
 ready to verify. Wherefore, for want of sufficient matter in that behalf
 to the said jury shown in evidence, the plaintiff prays judgment, and that
 the jury aforesaid may be discharged from giving any verdict upon the
 said issue, and that his damages by reason of the grievances within com-
 plained of may be adjudged to him [*&c. or if the demurrer be by defend-
 ant, then, for the last sentence beginning "and that his damages, &c." substitute the following, "and that the plaintiff may be barred from having
 or maintaining his aforesaid action thereof against him, &c."*]

[*Counsel's signature.*][*See 1 Chit. Ar. Pr. 310.*]2. *Joinder by Defendant.*

D. } And the defendant, inasmuch as he hath shown in evidence to
 ats } the jury aforesaid sufficient matter to maintain the said last-men-
 B. } tioned issue upon his part, and which the defendant is ready to
 verify, and inasmuch as the plaintiff doth not deny or in any manner
 answer the said matter, prays judgment, and that the plaintiff, as to the
 said last-mentioned issue, may be barred from having or maintaining his
 aforesaid action thereof against him, and that the jury aforesaid may be
 discharged from giving their verdict upon the said last-mentioned issue,
 &c. Wherefore let the jury aforesaid be discharged by the court here, by
 the assent of the parties, from giving any verdict thereupon.

[*Counsel's signature.*]3. *Joinder by Plaintiff.*

B. } And the plaintiff, inasmuch as [*&c. as in the last form to the*
 v. } *words*] prays judgment, and his damages by reason of the trespass
 D. } [*or as the action is*] within complained of to be adjudged to him, &c.
 Whereupon it is told to the jurors aforesaid, that they shall inquire what
 damages the plaintiff has sustained, as well by reason of the matter by
 him shown in evidence as aforesaid, as for his costs and charges by him
 about his suit in this behalf expended, in case judgment shall be given
 for the plaintiff upon the evidence aforesaid. And the jurors aforesaid,
 upon their oath aforesaid, thereupon say, that in case judgment shall be
 given for the plaintiff upon the evidence aforesaid, then they assess the
 damages of the plaintiff by him sustained, by reason of the matter by him

shown in evidence as aforesaid, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. And thereupon the jury aforesaid, by the assent of the parties, are discharged from giving any further verdict upon the premises.

[*Counsel's or Serjeant's signature.*]

4. *Bill of Exceptions to be tacked to the Record on a Trial at the Assizes.*

[*After the end of the issue and award of venire facias, proceed thus:*]— Which said several issues, in manner aforesaid respectively joined between the plaintiff and the defendant, afterwards, at the assizes holden at ——, in and for the county of ——, before sir ——, knight, one of the justices of our lady the queen, of the court of our said lady the queen, before the queen herself, and sir ——, knight, one of the barons of her majesty's court of Exchequer, at Westminster, justices of our said lady the queen assigned to take the assizes in and for the said county of ——, according to the form of the statute in such case made and provided, on ——, came on to be tried; at which day, before the said justices, came as well the plaintiff as the defendant by their respective attornies aforesaid; and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said several issues in manner aforesaid respectively joined. And thereupon to maintain the issue thirdly above joined, the defendant then and there gave in evidence to the jury so impanelled and sworn as aforesaid, that [*&c. state the evidence* "and that ——;" "and further that ——," &c.] And thereupon the plaintiff offered to prove that [*&c. state the substance of the evidence afterwards objected to and admitted*]; whereupon the counsel on the part of the defendant interposed, and insisted that the said evidence so offered to be given by the plaintiff to the jurors aforesaid, was not good or admissible in law upon the issue aforesaid, and prayed the said justices to inform the jurors aforesaid that the said last-mentioned evidence was not good or admissible in law upon the issue aforesaid, and that the issue aforesaid secondly above joined ought to be found for the plaintiff. But the said justices held and affirmed, that the said evidence, so offered to be given by the plaintiff as aforesaid, was good and admissible in law; and thereupon the plaintiff gave in evidence and proved to the jury aforesaid, that [*state the evidence objected to*]: And the said justices by their direction to the said jury, according to their opinion, left the consideration thereof to the jurors aforesaid; and the jurors aforesaid gave their verdict against the defendant upon the issue last aforesaid. Whereupon the counsel for the defendant, conceiving that by law the matter aforesaid, so as aforesaid given in evidence to the said jurors, by the plaintiff, on the issue aforesaid secondly above joined, was not admissible in law upon the said issue, made their exceptions to the said opinion of the said justices; and inasmuch as the matters aforesaid do not appear by the record of the verdict aforesaid, the counsel on the behalf of the defendant prayed that the said justices would set their hands and seals to this bill of exceptions containing the several matters so proved and given in evidence as aforesaid, according to the form of the statute in such case made and provided; and thereupon the said sir ——, knight, hath set his hand and seal thereto, according to the form of the statute in such case made and provided, at —— (*the assize town*) aforesaid, the —— day of ——, in the —— year of the reign of our sovereign lady Queen Victoria.

[*Counsel's signature.*]

[*See 1 Chit. Ar Pr. 311.*]

SECTION VIII.

NONSUIT.

1. *Postea on a Nonsuit.*

Afterwards, that is to say, on the day and at the place within contained, before the right honourable — (name of chief justice, or in Excheq., of chief baron,) the chief justice [or “chief baron”] within-mentioned, —, esquire, being associated to the said chief justice [or “chief baron,” or, in country causes, “before sir —, knight, one of the justices of our lady the queen, assigned to hold pleas before the queen herself, and sir —, knight, one of the justices of our lady the queen of the Bench,” or “sir —, knight, one of the barons of the Exchequer of our lady the queen,”] according to the form of the statute in such case made and provided, come as well the within-named plaintiff as the within-named defendant, by their respective attornies within-mentioned;* and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried, and sworn [if the plaintiff was nonsuited after giving evidence, here say, “after evidence being given to them thereupon,”] withdrew from the bar here, to consider of the verdict to be by them given of and upon the premises; and after they had considered thereof and agreed among themselves, they returned to the bar here to give their verdict in this behalf. Whereupon the plaintiff, being solemnly called, comes not, nor does he further prosecute his suit against the defendant. Therefore, &c.

[See 1 Chit. Ar. Pr. 31.]

2. *The like, in Trespass, against a Peace Officer.*

[Same as in the above form to the asterisk*, and then thus:]—and the jurors of that jury, being summoned, also come, who, to speak the truth of the matters within contained, were chosen, tried, and sworn; and on the behalf of the said C. D., E. F., and G. H. (the defendants), it was given in evidence to the jurors aforesaid, that the said C. D. was a headborough, and that what he did was in the execution of his office of headborough aforesaid; and that what the said E. F. and G. H. respectively did, was in aid of the said C. D. and by his command; upon which the jurors aforesaid withdrew from the bar, &c. [conclude as in the last.]

3. *Judgment on a Nonsuit.*

[Commence and proceed in the entry of the judgment as in other cases, post, Chap. 5, s. 2, to the end of the postea, and then thus:]—Therefore it is considered that the plaintiff take nothing by his said writ, but that he (a) be in mercy &c., and that the defendant do go thereof without day &c.; and it is further considered that the defendant do recover against the plaintiff £——, for his costs and charges by him about his defence in this behalf laid out and expended, by the court here adjudged to the defendant and

(a) It should seem that the averment of “and his pledges to prosecute,” which used to be here inserted, is no

longer requisite or proper in actions commenced by writ of summons, writ of capias, or writ of detainer.

with his assent, according to the form of the statute in such case made and provided; and that the defendant have execution thereof, &c.

[See 1 *Chit. Ar. Pr.* 314.]

4. *Fi. Fa. thereon.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you that you cause to be made of the goods and chattels in your bailiwick of *A. P.*, the sum of £—, which lately in our court before us [*or in C. P.* “before our justices,” *or in Exchequer* “before the barons of our Exchequer,”] at Westminster, were awarded to *C. D.* according to the form of the statute in such case made and provided, for his costs and charges by him laid out and expended about his defence in a certain action on promises (*or as the form of action was*), lately brought in our said court by the said *A. B.* against the said *C. D.*, for that the said *A. B.* did not prosecute the said action, whereof the said *A. B.* is convicted, as appears to us of record [*in C. P.* omit the words “as appears to us of record,” *or in Exchequer*, say “as by inspecting the rolls of our said Exchequer appears to us:”] together with interest upon the said sum of £—, at the rate of £4 per centum per annum, from the — day of —, A.D. —, on which day the judgment aforesaid was entered up [*or if the judgment was recovered before 1st Oct. 1838(a)* say “from the 1st day of October, 1838”]: and have that money with such interest as aforesaid before us [*or in C. P.* “before our justices,” *or in Exchequer*, “before our barons,”] at Westminster, immediately after the execution hereof, [*or “on —,”*] to be rendered to the said *C. D.* for his costs and charges, and interest, aforesaid: and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof: and have there then [*or in C. P.*, *or in Exchequer*, omit the word “then,”] this writ. Witness —, (*name of chief justice or chief baron*), at Westminster, the — day of —, in the — year of our reign.

Indorse this writ thus:—“Levy the whole [*or ‘levy £—,’*] and interest at 4l. per cent. from 1839, besides sheriff’s poundage, officer’s fees, and all other incidental expenses. (*b*) The plaintiff is a [tailor], and resides at [Brentford]. *D.A.* [Temple], defendant’s attorney, —, 1839.]

5. *Testatum Fi. Fa. thereon.*

See a form, post; which, with the above form, may be readily adapted to meet the case.

6. *Ca. Su. thereon.*

Victoria [*&c. as in the form, ante, 88, No. 4,*] to the sheriff of —, greeting: We command you that you take *A. B.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in C. P.* “before our justices,” *or in Exchequer*, “before our barons,”] at Westminster, on —, [*or “immediately after the execution hereof,”*]

(a) See 1 & 2 Vict. c. 110, s. 17.

(b) It is doubtful whether more than the amount of the judgment can be levied, and it is safest not to levy

more; see *Baker v. Syder*, 7 Taunt. 179; *Woodgate v. Knaichbull*, 2 T. R. 158.

to satisfy *C. D.* £—— which lately in our court before us [or in *C. P.* “before our justices,” or in *Exchequer*, “before our barons,”] at Westminster, were awarded to the said *C. D.*, according to the form of the statute in such case made and provided, for his costs and charges by him laid out and expended about his defence in a certain action on promises (or as the form of action was), lately brought in our said court by the said *A. B.* against the said *C. D.*, for that the said *A. B.* did not prosecute the said action, whereof the said *A. B.* is convicted, as appears to us of record, [in *C. P.* omit the words “as appears to us of record,” or in *Exchequer*, say, “as by inspecting the rolls of our said Exchequer appears to us:”] together with interest upon the said sum of £—— at the rate of 4*l.* per centum per annum, from the —— day of —— A.D. ——, on which day the judgment aforesaid was entered up [or if judgment was recovered before the 1st October, 1838 (a), say, “from the 1st day of October, A.D. 1838,”] and have you there then [or in *C. P.*, or in *Exchequer*, omit the word “then,”] this writ. Witness ——, (name of chief justice or chief baron,) at Westminster, the —— day of ——, in the —— year of our reign.

Indorse this writ thus:—“Levy the whole [or ‘levy £——,’] besides officer’s fees, &c. (b) The plaintiff is a [tailor], and resides at [Brentford]. *D. A.* [Temple], defendant’s attorney, ——, 1839.”

7. *Testatum Ca. Sa. thereon.*

See a form of *testatum ca. sa. post*; which, with the above form, may be readily adapted to meet the case.

8. *Fi. Fa. after a Levy of Part.*

See a form of *fi. fa. after a levy of part, post*; which, with the above form of *fi. fa.*, may be readily adapted to meet the case.

9. *Ca. Sa. after a Levy of Part.*

See a form of *ca. sa. after levy of part, post*; which, with the above form of *ca. sa.*, may be readily adapted to meet the case.

SECTION IX.

SPECIAL VERDICT.—SPECIAL CASE.

1. *Postea on a Special Verdict.*

Afterwards, that is to say, on the day and at the place within contained, before the right honourable —— (name of chief justice, or in *Exch.* of chief baron), the chief justice [or “chief baron”] within mentioned, ——, esquire, being associated to the said chief justice [or “chief baron,” or, in country causes, “before sir ——, knight, one of the justices of our lady the queen assigned to hold pleas before the queen herself, and sir ——, knight, one of the justices of our lady

(a) See 1 & 2 Vic. . 110, s. 17.

(b) See note (b), ante, p. 88.

the queen of the Bench, (or, 'sir ———, knight, one of the barons of the Exchequer of our lady the queen'), justices of our said lady the queen, assigned to take the assizes in and for the county of ———, according to the form of the statute in such case made and provided,"] come as well the within-named plaintiff as the within-named defendant, by their respective attornies within mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, say upon their oath, that [*&c. state the facts proved at the trial with certainty and precision*]. But whether or not upon the whole matter aforesaid, by the jurors aforesaid, in form aforesaid found, [*state the substance of the issue joined, as thus: "the defendant be guilty of the grievances within specified"*] the jurors aforesaid are altogether ignorant; and therefore they pray the advice of the court of our said lady the queen before the queen herself [*or in C. P. "of the court of our said lady the queen of the Bench at Westminster," or in Exch. "of the court of our said lady the queen of her Exchequer at Westminster"*]; and if, upon the whole matter aforesaid, it shall seem to the said court that [*state the affirmative of the issue, as thus: "that the defendant is guilty of the grievances aforesaid"*], then the jurors aforesaid, upon their oath aforesaid, say that [*again state the affirmative of the issue: "that the defendant is guilty thereof, in manner and form as the plaintiff hath within complained against him;"*] and in that case they assess the damages of the plaintiff by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. But if upon the whole matter aforesaid, it shall seem to the court that [*state the negative of the issue, as thus: "that the defendant is not guilty of the grievances aforesaid,"*] then the jurors aforesaid, upon their oath aforesaid, say that [*again state the negative of the issue: "the defendant is not guilty thereof, in manner and form as the plaintiff hath within complained against him."*]

[*Counsel's signature.*]

[See 1 Chit. Ar. Pr. 316.]

2. Judgment thereon in Q. B.

[*Commence and proceed in the entry of the judgment to the end of the postea, supra, and then thus:*] And because the court of our said lady the queen, before the queen herself, now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before our said lady the queen at Westminster, until ———, to hear the judgment of the said court thereupon, for that the court of our said lady the queen before the queen herself now here are not yet advised thereof, &c.: At which day before our said lady the queen at Westminster, come as well the plaintiff as the defendant, by their respective attornies aforesaid, and hereupon all and singular the premises being seen and by the court of our said lady the queen before the queen herself now here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the defendant is guilty of the grievances aforesaid in manner and form as the plaintiff hath above thereof complained against him. Therefore it is considered [*&c. stating the judgment.*]

[See 1 Chit. Ar. Pr. 318.]

3. *Execution thereon.*

Same as in ordinary cases. See forms, post.

4. *Special Case(a).*

In the Court of Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

This was an action of [assumpsit to recover £——, as money had and received by the defendant for the use of the plaintiff.]

The defendant pleaded [non assumpsit.]

The cause came on to be tried before the right honourable ——, knight, at the sittings for London [*or "Middlesex,"*] in [*or "after"*] —— term last [*or at the assizes, "before the Honourable Mr. Justice ——, at the last spring (or 'summer') assizes, in and for the county of ——"*]; when a verdict was found for the plaintiff for £—— damages, and costs of suit; subject to the opinion of the court upon the following

CASE.

[*Here state the facts with conciseness, as proved or agreed to by the parties at the trial, and conclude as follows:—*

The question for the opinion of the court is, whether [*&c. stating the question*]; and if the court shall be of opinion that [*&c. as insisted by the plaintiff's counsel*], then the verdict is to be entered for the plaintiff, as aforesaid; but if the court shall be of a contrary opinion, then a verdict is to be entered for the defendant [*or "a nonsuit is to be entered."*]

[*Signatures of counsel.*]

[*See 1 Chit. Ar. Pr. 318.*]

5. *Postea, Judgment, and Execution thereon.*

Same as in ordinary cases. See forms of postea, post, 92, &c.; the form of judgment, post, Chap. 5, s. 2, &c.; the forms of execution, post.

(a) For the form of a special case stated by leave of the court or a judge before a trial, see post.

CHAPTER V.

PROCEEDINGS FROM THE POSTEA TO THE ENTRY OF SATISFACTION ON
THE RECORD INCLUSIVE.

SECTION I.

THE POSTEA.

1. *Postea in Assumpsit, where the Defendant appears at the Trial.*

Afterwards, that is to say, on the day and at the place within contained, before the right honourable —— (*name of chief justice in Q. B. or C. P.*) the chief justice within mentioned, ——, esquire, being associated to the said chief justice according to the form of the statute in such case made and provided [*or in Exch. say, "before the right honourable ——, (name of chief baron) the chief baron within named;" or, in country causes, "before sir ——, knight, one of the justices of our lady the queen assigned to hold pleas before the queen herself, and sir ——, knight, one of the justices of our lady the queen of the Bench, (or 'sir ——, knight, one of the barons of the Exchequer of our lady the queen,')* justices of our said lady the queen, assigned to take the assizes in and for the county of ——, according to the form of the statute in such case made and provided,"]† come as well the within-named plaintiff as the within-named defendant, by their respective attornies within mentioned; and the jurors of the jury, whereof mention is within made, being summoned also come, who to speak the truth of the matters within contained, being chosen, tried, and sworn,* say upon their oath that [*&c. stating the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted in the pleadings, thus: if the plea be non-assumpsit say,—*"That the defendant did promise, in manner and form as the plaintiff hath within complained against him;" and they assess the damages of the plaintiff, on occasion of the not performing the promises within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c.

[See 1 Chit. Ar. Pr. 328, 320.]

2. *Postea in Debt.*

[*Same as the form, supra, to the asterisk*, and then state the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted by the pleadings; thus, if the plea be nunquam indebitatus,*] say upon their oath that the defendant was indebted to the plaintiff, in manner and form as the plaintiff hath within complained against him; [*or where the plea is non est factum, "that the writing obligatory (or 'indenture,' or 'articles of agreement,' or 'deed poll,')* within-mentioned, is the deed of the defendant, in manner and form as the plaintiff hath within in that

behalf alleged,"] and they assess the damages of the plaintiff on occasion of the detaining the within debt, over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to forty shillings. Therefore, &c.

[See 1 Chit. Ar. Pr. 328, 320.]

3. *Postea in Debt on Bond, where the Breach is assigned in the Pleadings, and Damages are assessed on Stat. 8 & 9 Will. 3, c. 11, s. 8. (a)*

[Same as in the form, ante, 92, No. 1, to the asterisk*, and then thus:] say upon their oath that the defendant did not indemnify or save harmless [&c. stating the breach as assigned in the pleadings;] but wholly refused and neglected so to do, contrary to the tenor and effect of the condition of the within-mentioned writing obligatory, in manner and form as the plaintiff hath within in that behalf alleged, and they assess the damages of the plaintiff, on occasion of the detaining of the within debt, over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to forty shillings; and they also assess the damages of the plaintiff, on occasion of the breach of the said condition within assigned, according to the form of the statute in that case made and provided, to £——. Therefore, &c.

[See 1 Chit. Ar. Pr. 328, 320.]

4. *The like, where Non est Factum is pleaded and Breaches suggested in the Issue(a).*

[Same as in the form, ante, 92, No. 1, to the asterisk*, and then thus:] as to the issue within joined between the said parties, say upon their oath, that the within-mentioned writing obligatory is the deed of the defendant, as the plaintiff hath within in that behalf alleged; and the jurors aforesaid, upon their oath aforesaid, further say that the several matters within suggested as and for a breach of the condition of the said writing obligatory, were and are true; and they assess the damages, &c. [Conclude as in the last].

5. *Postea in Covenant.*

[Same as in the form, 92, No. 1, to the asterisk*, and then state the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted by the pleadings; thus, if the plea be non est factum,] say upon their oath that the indenture [or "articles of agreement," or "deed-poll,"] within-mentioned, is the deed of the defendant, in manner and form as the plaintiff hath within in that behalf alleged; and they assess the damages of the plaintiff, on occasion of the breaches of the covenant within assigned, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c.

[See 1 Chit. Ar. Pr. 328, 320.]

6. *Postea in Detinue.*

[Same as in the form, ante, 92, No. 1, to the asterisk*, and then state

(a) See further post, Book 2, Part 4, Chap. 4; and *Quin v. King*, 1 M. & W. 42; *Scott v. Staley*, 4 Bing. N. C., 724, as to when a special venire is necessary or not.

the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted by the pleadings; thus, if the plea be non detinet,] say upon their oath that the defendant doth detain the goods and chattels [*or “deeds and papers, (according to the finding of the jury) within mentioned, in manner and form as the plaintiff hath within complained against him;”*] and they find the goods and chattels [*or “deeds and papers” &c.*] so detained, to be of the value of £——, and they assess the damages of the said plaintiff, on occasion of the detaining of the said goods and chattels, [*or “deeds and papers” &c.*] over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to forty shillings. Therefore, &c.

[*See 1 Chit. Ar. Pr. 328, 321.*]

7. *Postea in Case or Trover.*

[*Same as in the form, ante, 92, No. 1, to the asterisk*, and then state the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted by the pleadings; thus, if the plea be not guilty,]* say upon their oath,, that the defendant is guilty of the grievances within laid to his charge, in manner and form as the plaintiff hath within complained against him; and they assess the damages of the plaintiff, on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c.

[*See 1 Chit. Ar. Pr. 328, 320.*]

8. *Postea in Trespass.*

[*Same as in the form, ante, 92, No. 1, to the asterisk*, and then state the affirmative or negative of the issue, as it is found for the plaintiff, and in the terms adopted by the pleadings; thus, if the plea be not guilty,]* say upon their oath, that the defendant is guilty of the trespass [*or, “the several trespasses”*] within laid to his charge, in manner and form as the plaintiff hath within complained against him; and they assess the damages of the plaintiff, on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c.

9. *Postea in Replevin.*

See forms, post, Book 3, Part 1, Chap. 2.

10. *Postea in Ejectment,*

See form, post, Book 3, Part 1, Chap. 1.

11. *Postea where there are several Issues, and all found for Plaintiff.*

[*Same as in the form, ante, 92, No. 1, to the asterisk, and then thus:]* as to the first issue within joined between the said parties, say upon their oath that [the defendant did (undertake and) promise, in manner and form as the plaintiff hath within complained against him:] And as to the second issue within joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say, that [the said several causes of action did

accrue to the plaintiff within six years next before the commencement of this suit, in manner and form as the plaintiff hath within alleged:] And as to the last issue within joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say, that [the plaintiff was not nor is indebted to the defendant, in manner and form as the said defendant hath within in that behalf alleged; so stating the affirmative or negative of each issue, as it is found for the plaintiff, and in the terms adopted in the pleading, and conclude the postea thus:] And the said jurors assess the damages of the plaintiff on occasion of [the not performing the promises (and undertakings) within mentioned] over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings, [or if the action be not in assumpsit, conclude the postea accordingly; see the forms in different actions, *supra*.] Therefore, &c.

[See 1 Chit. Ar. Pr. 328.]

12. *Postea for Plaintiff, on Non-assumpsit, except as to Sum tendered.*

[Same as in the form, ante, 92, No. 1, to the asterisk, and then thus:] say upon their oath, that the defendant did [undertake and] promise, to a larger amount than the within-mentioned sum of £——, (that is to say,) to the amount of the sum of £——, parcel of the several sums of money in the within declaration mentioned, in manner and form as the plaintiff hath within thereof complained against him: and they assess the damages of the plaintiff, on occasion of the not performing of the promises [and undertakings] within-mentioned, over and above the within-mentioned sum of £——, and his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c.

13. *Postea for Plaintiff on Non-assumpsit, by one of several Defendants where another has let Judgment go by default.*

[Same as in the form, ante, 92, No. 1, to the asterisk*, and then thus:] say upon their oath, that the said C. D. did [undertake and] promise, in manner and form as the plaintiff hath within complained against him: and they assess the damages of the plaintiff on occasion of the not performing of the within-mentioned promises [and undertakings] as well against the said C. D. as against the within-named E. F., over and above the costs and charges of the plaintiff by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c.

14. *Postea where one Issue is found for Plaintiff, and another for Defendant.*

[Same as ante, 92, No. 1, to the asterisk*, and then thus:] as to the first issue within joined between the said parties, say upon their oath, that [the defendant did (undertake and) promise, in manner and form as the plaintiff hath within in the first count of the said declaration complained against him;] and they assess the damages of the plaintiff, on occasion of the not performing the promises (and undertakings) [in the said first count] within-mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and

charges to forty shillings [or if the action be not in *assumpsit*, state the assessment of the damages and costs accordingly; see forms, ante, 92, to *supra*.] And as to the last issue within joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say, that the defendant did not undertake and promise in manner and form as the plaintiff hath within in the last count of his said declaration complained against him, [so stating the affirmative or negative of each issue, as it is found by the jury, and in the terms adopted by the pleading.] Therefore, &c.

15. *Postea for Plaintiff on Not Guilty to a new Assignment, where the other Issues are found for Defendant.*

[Same as ante, 92, No. 1, to the asterisk*, and then thus:] as to the first issue within joined between the parties aforesaid, upon their oath say, that [the defendant is not guilty of the trespasses within laid to his charge, or any or either of them, or any part thereof, except as hereinafter mentioned, in manner and form as the plaintiff hath within complained against him.] And as to the second issue within joined between the parties aforesaid, the jurors aforesaid upon their oath say, that [the defendant, at the within-mentioned time when &c., did not of his own wrong, but for such cause as the defendant hath within in his second plea in that behalf alleged, assault, beat, and ill-treat the plaintiff, as in the first count of the within declaration is mentioned.] And as to the last issue within joined between the parties aforesaid, the jurors aforesaid upon their oath say, that the defendant is guilty of the trespasses within anew assigned, in manner and form as the plaintiff hath within complained against him; and they assess the damages of the plaintiff, on occasion of the committing of the last-mentioned trespasses, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c.

16. *Postea for Plaintiff, where one Defendant is found guilty and another acquitted.*

[Same as ante, 92, No. 1, to the asterisk*, and then thus:] say upon their oath, that the said C. D. is guilty of the several trespasses [or "grievances"] within laid to his charge [or in case there has been a prior action, which the non-joinder of one of the present defendants was pleaded in abatement, and that the defendant be now acquitted, instead of the foregoing words, "is guilty" &c. say "did undertake and promise," or "doth owe the said sum above demanded," according to the form of action,] in manner and form as the plaintiff hath within complained against him; and they assess the damages of the plaintiff against the said C. D. on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. And the jurors aforesaid, upon their oath aforesaid, further say that the said E. F. is not guilty of the several trespasses [or "grievances"] within laid to his charge [or in case there has been a prior action in which the non-joinder of one of the present defendants was pleaded in abatement, and that the defendant be now acquitted, instead of the foregoing words, "is not guilty" &c. say, "did not undertake and promise," or "doth not owe the said sum above demanded," according to the form of the action], in manner and form as the plaintiff hath within complained against him. Therefore, &c.

[See 1 Chit. Ar. Pr. 328, 315.]

17. *Certificate of Judge on the Record to deprive the acquitted Defendant of Costs (a).*

I certify that in my opinion there was reasonable cause for making the within-named *E. F.* a defendant in this action. Dated the — day of —, 1840.
[Judge's or Baron's signature.]

18. *Postea for Plaintiff where some Defendants are acquitted, and others let Judgment go by default.*

[Same as ante, 92, No. 1, to the asterisk*, and then thus:] as to the issue within joined between the plaintiff and the said *C. D.* and *E. F.* say upon their oath, that the said *C. D.* and *E. F.* are not guilty of the trespasses [or "grievances"] within laid to their charge, in manner and form as the plaintiff hath within complained against them; and they assess the damages of the plaintiff, against the within-named *G. H.* and *I. K.* on occasion of the premises within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £—, and for those costs and charges to forty shillings. Therefore, &c.

19. *Postea, on a Verdict for Defendant.*

[Same as ante, 92, No. 1. to the asterisk*, and then state the affirmative or negative of the issue, as it is found for defendant, and in the terms adopted by the pleading; thus if the plea be non-assumpsit,] "say upon their oath, that the defendant did not promise, in manner and form as the plaintiff hath within complained against him. Therefore &c." [Or if he pleaded a set-off:] "say upon their oath, that the plaintiff was and is indebted to the defendant in manner and form as the defendant hath within alleged. Therefore, &c." [Or if the action were in debt, and he pleaded that he never was indebted:] "say upon their oath, that the defendant never was indebted to the plaintiff as the plaintiff hath in that behalf alleged. Therefore, &c." [Or if he pleads non est factum:] "say upon their oath, that the within-mentioned writing obligatory (or 'indenture, &c.') is not the deed of the defendant, as the plaintiff hath within in that behalf alleged. Therefore, &c." [Or if the action were in case, and he pleaded not guilty:] "say upon their oath that the defendant is not guilty of the grievances within laid to his charge, or of any or either of them, or any part thereof, in manner and form as the plaintiff hath within complained against him. Therefore, &c." [Or if the action were in trespass, and he pleaded not guilty:] "say upon their oath, that the defendant is not guilty of the several trespasses within laid to his charge, or any or either of them, or any part thereof, in manner and form as the plaintiff hath within complained against him. Therefore, &c."

20. *Postea, on Verdict for Defendant, where there are several Issues and all found for him.*

[Same as ante, 92, No. 1, to the asterisk*, and then thus:] as to the first issue within joined between the said parties, say upon their oath, that [state the first issue as found for the defendant, and in the terms adopted by the pleading.] And as to the second issue within joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say that [state

(a) The 3 & 4 Will. 4, c. 42, s. 32, allows to make this certificate.

the second issue as found for the defendant, and in the terms adopted by the pleading.] And as to the last issue within joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say that [so stating each issue as found for the defendant, and in the terms adopted by the pleading.] Therefore, &c.

21. *Postea, on Verdict for Defendant, on a Plea of Tender as to Part, and Non-assumpsit as to Residue.*

[*Same as ante, 92, No. 1, to the asterisk*, and then thus:*] as to the first issue within joined between the said parties, upon their oath say, that the defendant did not promise, to an amount beyond the sum of £—— within mentioned, in manner and form as the plaintiff hath within in that behalf alleged; and as to the last issue within joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say that the defendant did tender and offer to pay to the plaintiff the sum of £——, parcel of the several sums of money in the within declaration mentioned, in manner and form as the defendant hath within in that behalf alleged. Therefore, &c.

22. *Postea, on Verdict for one Defendant in Assumpsit, where the other Defendant has let Judgment go by default.*

[*Same as ante, 92, No. 1, to the asterisk*, and then thus:*] say upon their oath, that the said C. D. did not promise in manner and form as the plaintiff hath within complained against him: and hereupon the said jurors are discharged from inquiring against the within-named E. F. what damages the plaintiff hath sustained by reason of the premises within mentioned. Therefore, &c.

23. *Postea, on Verdict for Defendant, in Trespass on Not Guilty, and a Justification where the Jury are discharged as to the latter.*

[*Same as ante, 92, No. 1, to the asterisk*, and then thus:*] as to the first issue within joined between the parties aforesaid, upon their oath say, that the defendant is not guilty of the trespasses within laid to his charge, or any of them, or any part thereof, in manner and form as the plaintiff hath within complained against him: And hereupon the said jurors, by the direction of the said chief justice, [or “justices of assize,”] and with the consent of the said parties respectively, are discharged from giving any verdict on the last issue within joined between the parties aforesaid. Therefore, &c.

24. *Postea, where a Juror is withdrawn.*

[*See the form, ante, p. 78.*]

25. *Postea, where the Defendant does not appear at the Trial.*

[*Proceed as in common cases as in the postea, ante, 92, No. 1, to the, and then thus:*] comes the within-named plaintiff by his attorney within mentioned, and the within-named defendant, although solemnly required, comes not, but makes default: Therefore let the jurors of the jury, whereof mention is within made, be taken against him by his default: And the jurors of that jury being summoned, also come, who, to speak the truth

of the matters within contained being chosen, tried and sworn, say upon their oath, that, &c. [*here conclude, stating the finding of the jury as in ordinary cases. See the preceding forms.*]

26. *Postea, where the Cause was tried by a Puisne Judge in the Absence of the Chief Justice.*

Afterwards, that is to say, on the day and at the place within contained, before the honourable sir —, knight, one of the justices of our said lady the queen assigned to hold pleas in the said court of our said lady the queen before the queen herself, [*or in C. P. "assigned to hold pleas in the court of our said lady the queen of the bench at Westminster," or in Exch. "one of the barons of her majesty's Exchequer at Westminster,"*] in the absence and in the place and stead of the Right Honourable —, the chief justice, [*or "chief baron"*] within mentioned, T. D. esq. being associated unto the said justice [*or "baron,"*] according, &c. [*Conclude as ante, 92, No. 1.*]

27. *Postea, where there is a Tales.*

[*Same as in the form, ante, 92, No. 1, to the †, and then thus:*] come as well the within-named plaintiff as the within-named defendant [*or if defendant did not appear, say, "come as well the within-named plaintiff by his attorney within mentioned: and the within-named defendant, although solemnly required, comes not, but makes default; therefore let the jurors of the jury, whereof mention is within made, be taken against him by his default:"*] And the jurors of that jury, being summoned, some of them, that is to say, J. J., &c. [*(name such of the jurors as appeared at the trial,)*] come and are sworn upon that jury; and because the residue of the jurors of the same jury do not appear, therefore others of the bystanders, being chosen by the sheriff of the county aforesaid, at the request of the plaintiff [*or "defendant,"*] and by the command of the said chief justice [*or "chief baron,"*] (*if in London or Middlesex; if at the assizes, then say, "by command of the said justices or barons,"*) are appointed anew, whose names are annexed to the within written panel, according to the form of the statute in that case made and provided; which said jurors so appointed anew, that is to say, J. J. of, &c. (*naming the talesmen*) being called, likewise come, who, together with the said other jurors before impanelled and sworn, being chosen, tried, and sworn to speak the truth of the matters within contained, say upon their oath, that, &c. [*state the finding of the jury, and conclude as in other cases; and see the preceding forms.*]

28. *Postea, at the Assizes, when only one Judge goes the Circuit.*

Afterwards, that is to say, on the day and at the place within contained, before —, one of the justices [*or "barons," &c., see supra, No. 26,*] and —, esq. for this time associated to the right honourable [Thomas Lord Denman,] chief justice of our said lady the queen, assigned to hold pleas before the queen herself, and to the said —, justices of our said lady the queen, assigned to take the assizes in the county of —, according to the form of the statute, &c. (the presence of the said [Thomas Lord Denman] not being expected, by virtue of the writ of our said lady the queen of *Si non omnes*, &c.) comes the within-named plaintiff, &c. [*Continue the postea as in ordinary cases. See the preceding forms.*]

29. *Postea, in a County Palatine.*

Afterwards, that is to say, at the next general sessions of assize holden at Lancaster [or "Durham" (a)] in and for the county palatine of Lancaster [or "Durham" (a)] within-mentioned, upon —, the — day of —, in the — year of the reign of her present majesty Queen Victoria, before —, one of the justices of our said lady the queen &c. [as ante, 99, No. 26,] and —, one of the justices of our said lady the queen &c. [as ante, 99, No. 26,] justices of our said lady the queen at Lancaster [or "Durham" (a)] aforesaid, cometh the within-named plaintiff by his attorney, and prayeth to be done to him what the law requireth, in order to try the issue within joined between him and the within-named defendant; and whereupon, by a writ of our said lady the queen, the sheriff of the said county is commanded that he cause to come before the said justices here at Lancaster [or "Durham" (a)] on — next to come, in the same session of assize, twelve &c., by whom &c., and who neither &c., to recognise &c., because as well &c., the same day is given to the said parties here &c. At which day here comes as well the plaintiff by his attorney aforesaid, as the defendant by D. A. his attorney; and the sheriff, to wit, —, now returneth before the said justices at Lancaster [or "Durham" (a)], the said writ of *venire facias* to him in form aforesaid directed, together with a panel of the names of the jurors to the same writ annexed, in all things served and executed; and the jurors thereupon impanelled come not: Therefore, by another writ of the said lady the queen, the same sheriff of the county aforesaid is commanded that he have their bodies before the said justices at Lancaster [or "Durham" (a)] on — next to come, in the same session &c. At which day, to wit, on —, in the — year of the reign of her said majesty, come here as well the plaintiff as the defendant by their respective attornies aforesaid; and the sheriff returneth before the same justices at Lancaster [or "Durham" (a)] the same writ in all things served and executed: and thereupon the jurors impanelled and drawn by ballot according to the form of the statute in such case made and provided, being called over, likewise come, who, to speak the truth of the matters within mentioned being elected, tried and sworn, on their oath say &c., [state the verdict as in other cases, (see the preceding forms) omitting the words "Therefore &c."] And hereupon the said justices at Lancaster [or "Durham" (a)] aforesaid have prefixed — next to come, for the said parties to be before our said lady the queen, [or in C. P. "before the justices of our said lady the queen," or in Exchequer, "before the barons of the Exchequer of our said lady the queen,"] at Westminster, to hear judgment &c.

30. *Postea for Plaintiff, where the facts are found specially under 3 & 4 Will. 4, c. 42, s. 24.*

[Same as first form of *Postea*, ante, 92, No. 1, to the asterisk,* and then as follows:] upon their oath say [here insert the verdict of the jury as in *Guest v. Elwes*, 6 N. & M. 433; 2 N. & P., 230. This was as follows, "as to the first issue within joined between the parties that the defendant is not guilty, &c., and as to the other issue within joined between the parties the jurors &c. say, that the defendant did not take and arrest the said J. H.

(a) The palatinate jurisdiction of the Bishop of Durham being now, by 5 and 6 Will. 4, vested in the crown (as a separate royalty) the *postea*

should, it seems, no longer be in the form of an answer or return by the Bishop.

in manner and form as the plaintiff hath within in that behalf alleged:"] and thereupon the said judge before whom the said issues came on to be tried, to wit, the said [Sir E. H. Alderson, knight] having, according to the form of the statute in that case made and provided, directed the said jurors to find the facts according to the evidence, the jurors aforesaid upon their oath aforesaid did further find and say according to the form of the said statute [here insert the special finding, which in the case above referred to was as follows, "that the defendant had been guilty of a negligent omission to arrest the said J. H. within named"] and they assess the damages which the plaintiff had thereby sustained at [430l.].

31. *Postea, where the Judge certifies for immediate Execution.*

[Same as in ordinary cases: see the preceding forms. The judge who tried the cause will indorse on the nisi prius record his certificate, which may be as in one of the two following forms.]

32. *Certificate of the Judge for immediate Execution.*

I certify, that in my opinion execution ought to issue in the within action forthwith [or "on the — day of — instant," or "next,"] for the whole of the sum [or "for £—, part of the sum,"] found by the verdict therein. Dated the — day of —, A.D. 18—.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 289.]

33. *The like, unless certain Bills or Goods are deposited with Plaintiff before a named day.*

I certify, that in my opinion execution ought to issue in the within action on the — day of — instant, [or "next,"] for the whole of the sum found by the verdict, unless the defendant shall before that day deliver to and deposit in the hands of the plaintiff certain bills of exchange, [or "goods," which the said plaintiff hath agreed to [or "which I order that the plaintiff shall"] accept as a collateral security for the payment of the damages and costs in the said cause, that is to say, a bill of exchange &c. [here describe the property to be deposited.] But in default thereof execution is to issue on the — day of —, A.D. 18—. Dated the — day of —, 18—.

[Judge's signature.]

34. *Order for Amendment to be indorsed on Postea, in pursuance of 9 Geo. 4, c. 15; or 3 & 4 Will. 4, c. 42, s. 23.*

According to the statute made in the ninth year of the reign of his late majesty King George the Fourth [or "in the third and fourth years of the reign of his late majesty King William the Fourth,"] I do order that the plaintiff [or "defendant"] have leave to amend, and that he do amend accordingly the within record, by inserting [or "striking out" &c.] in the declaration [or "plea" &c.] the words [&c. setting out the nature of the amendment,] on payment of costs to be taxed by the master [or "on payment of — shillings costs." Dated the — day of —, 18—.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 280.]

SECTION II.

JUDGMENT &c. AFTER VERDICT.

1. Judgment for Plaintiff, on a Verdict in Assumpsit (a).

" [Copy the issue to the end of the award of the venire, and proceed as follows:] Afterwards the jury between the parties is respited until the — (return of distringas or habeas corpora) day of —, unless — (b) shall first come on the (day of sittings or Nisi Prius) — day of —, at —, according to the form of the statute in that case made and provided for default of the jurors, because none of them did appear.

Afterwards, on the — (day of signing final judgment) day of —, come the parties aforesaid, by their respective attornies aforesaid, (or as the case may be), and — (c) before whom the said issue was tried, hath sent hither his record had before him in these words: [copy postea] Therefore it is considered that the said A. B. do recover against the said C. D. his said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed; and also £— for his costs and charges by the court here adjudged of increase to the said A. B. with his assent, which said damages, costs, and charges, in the whole, amount to £—, and the said C. D. in mercy, &c. (d)"

[In the margin of the roll opposite the words "Therefore it is considered," write "Judgment signed the — day of —, A. D. —;" also in the margin, opposite the words, "mercy, &c." at the end write "Mercy."]

[See 1 Chit. Ar. Pr. 330, &c.]

2. Judgment for Plaintiff, where the Cause was tried in a County Palatine.

[Copy the issue to the end of the award of the mittimus, and then thus:] And afterwards, to wit, on — then next following, (which day the parties aforesaid had prefixed to them, by — and —, justices assigned to take the assizes for the said county of —, to hear judgment thereupon,) comes here the plaintiff by his attorney aforesaid; and the said justices sent here the said record, with all things done thereupon before them at — aforesaid, in these words, to wit: Afterwards [&c. copy the postea verbatim to the end, and proceed thus:] Whereupon all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, it is considered [&c. stating the judgment as in ordinary cases. Write in the margin of the roll as directed at the end of form supra.]

(a) This form is prescribed by the recent rules of H. T. 4 Will. 4. See forms of Judgment in Replevin, and in suits removed from inferior courts, post.

(b) As to the mode of filling up this blank, see ante, 66.

(c) Here insert the words "the said chief justice," or "justice," or "baron," or "justices of assize," or as the case may be.

(d) No continuances are now to be entered; see 1 Chit. Ar. Pr. 336.

3. Judgment where the Judge certifies for immediate Execution, under 1 Will. 4, c. 7.

[*Proceed as in ordinary cases, see form, ante, 102, No. 1, to the end of the statement of the Postea inclusive, and then state the judge's certificate thus :*] and hereupon the said Sir —, knight, before whom the said issue was tried in form aforesaid, and before the end of the sittings of Nisi Prius, [or "assizes,"] at which the said cause was tried, to wit, on the — day of —, in the year of our Lord —, [at Westminster aforesaid,] certified under his hand upon the back of the record of and in the said action, according to the form of the statute in such case made and provided, and that he was of opinion that execution ought to issue on the — day of — then next, for the sum found by the said verdict; and thereupon afterwards and after the granting the said certificate, to wit, on the — day of —, in the — year of the reign of our said lady the queen, comes here the plaintiff, by his attorney aforesaid, and prays judgment: and that the damages, costs, and charges, by the jurors aforesaid assessed, and also his costs and charges by him about his suit in this behalf expended, of increase, may be adjudged to him, &c. Therefore it is considered by the court here, according to the form of the statute in such case made and provided, that the plaintiff do recover against the said defendant his said damages, [*&c. conclude as in ordinary cases, see form, ante, 102, No. 2, and infra, &c.*]

4. Judgment according to the Right and Justice of the Case, where the facts have been found specially under 3 & 4 Will. 4, c. 42, s. 24.

[*Proceed as in ordinary cases to the end of the postea, as ante, 102, No. 1, and then as follows :*] and it now appearing to the said court here that the variance between the mode of stating the cause of action in the declaration within mentioned, and the cause of action as it appeared upon the finding of the said jurors, is immaterial to the merits of the case, and that the mis-statement of the cause of action in the said declaration was and is such as could not have prejudiced the defendant in the conduct of the defence to the said action, and that, according to the very right and justice of the case, the said plaintiff ought to have judgment to recover his said damages: Therefore it is considered [*&c. state the judgment as in 102, No. 1.*]

5. Judgment for Plaintiff, in Debt.

[*Commence and proceed in the entry of the judgment, as in the form, ante, 102, No. 1, but state the judgment itself thus :*] Therefore it is considered that the plaintiff do recover against the defendant his said debt, and his damages aforesaid, on occasion of the detention thereof, to 1s., together with his costs and charges aforesaid, to 40s. by the jurors aforesaid in form aforesaid assessed, and also £— for his said costs and charges by the court here adjudged of increase to the plaintiff and with his assent; and the defendant in mercy, &c. [*If the defendant has denied his deed, then instead of the words "and the defendant in mercy &c." which is called a misericordia, say, "and let the defendant, inasmuch as he has denied his deed, be taken &c," which is called a capiatur.*]

[*Write in the margin of the roll as directed, ante, 102, No. 1.*]

6. *Judgment for Plaintiff in Debt on Bond where Damages were assessed on 8 & 9 Will. 3, c. 11, s. 8 (a).*

[Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, but state the judgment itself thus:] Therefore it is considered that the plaintiff do recover against the defendant his said debt, and his damages aforesaid, on occasion of the detention thereof, to 1s., together with his costs and charges aforesaid, to 40s. by the jurors aforesaid in form aforesaid assessed, and also £—— for his said costs and charges, by the court here adjudged of increase to the plaintiff and with his assent: It is also considered by the court here, that the plaintiff have execution against the defendant of the damages aforesaid to £—— by the said jury in form aforesaid assessed, on occasion of the aforesaid breach of the said condition of the said writing obligatory, according to the form of the statute in such case made and provided; and the defendant in mercy, &c.

[Write in the margin of the roll as directed, 102, No. 1.]

7. *Judgment in Debt qui tam, where Part is found for Plaintiff and Part for Defendant.*

[Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, but state the judgment itself thus:] Therefore it is considered that the plaintiff who sues as aforesaid do recover against the defendant for our said lady the queen and for himself, the plaintiff, the said sum of £—— in the said —— count of the said declaration mentioned, parcel of the said sum of £—— above demanded; and that our said lady the queen have one moiety thereof to her own use, and that the plaintiff, who sues as aforesaid, have the other moiety thereof to his own use, according to the form of the statute in such case made and provided: and the defendant in mercy, &c.* And let the plaintiff who sues as aforesaid be in mercy, for his false complaint against the defendant for the residue of the said sum of £—— whereof the defendant is acquitted; and let the defendant go thereof without day &c.

8. *The like, when Plaintiff is entitled to Costs.*

[Proceed as in the preceding form, to the end of the judgment for the penalty, at the asterisk*, and then thus:] And it is further considered by the court here, that the plaintiff who sues as aforesaid do recover against the defendant the said sum of 40s. for his costs and charges aforesaid, by the jurors aforesaid in form aforesaid assessed, and also £—— for his said costs and charges by the court here adjudged of increase to the plaintiff who sues as aforesaid, and with his assent, according to the form of the same statute; which said several sums of £—— and £—— in the whole amount to £——: and the defendant in mercy, &c. And let the plaintiff who sues as aforesaid be in mercy, for his false complaint against the defendant for the residue of the said sum of £—— whereof the defendant is acquitted, and let the defendant go thereof without day &c.

[Write in the margin of the roll as directed at the end of the form, ante, 102, No. 1.]

(a) See other forms, post, Book 2, Part 4, Chap. 4, s. 3.

9. *Judgment for Plaintiff, in Covenant.*

[*Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, but state the judgment itself thus:*] Therefore it is considered that the plaintiff do recover against the defendant his said damages, costs, and charges, by the jurors aforesaid in form aforesaid assessed, and also £ — for his said costs and charges by the court here adjudged of increase to the plaintiff and with his assent; which said damages, costs, and charges in the whole amount to £——: And let the defendant, inasmuch as he has denied his deed, be taken &c. [*or if defendant has not denied the deed, then instead of the words "and let &c." say "and the defendant in mercy &c."*]

[*Write in the margin of the roll as directed, 102, No. 1.*]

10. *Judgment for Plaintiff, in Detinue.*

[*Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, but state the judgment itself thus:*] Therefore it is considered that the plaintiff do recover against the defendant the said goods and chattels [*or "deeds and papers" &c. or enumerating them, if enumerated in the postea,*] or the said sum of £——, for the value of the same, if the plaintiff cannot have again his said goods and chattels, [*or, "deeds" &c.*] and also his said damages, costs, and charges to £——, beyond the value aforesaid, by the jurors aforesaid in form aforesaid assessed, and also £—— for his said costs and charges by the court here adjudged of increase to the plaintiff, and with his assent, and the defendant in mercy &c. And hereupon the sheriff is commanded that he distrain the defendant by all his lands and chattels in his bailiwick, so that neither the defendant, nor any one by him, do lay hands on the same until the said sheriff shall have another command from the court here in that behalf, and that the said sheriff answer for the issues of the same, so that the defendant render to the plaintiff the goods and chattels [*or "deeds" &c.*] aforesaid, or the said sum of £——, for the value of the same; and in what manner &c. he is commanded to make appear &c. (*This latter part of the entry is called the distringas.*)

[*Write in the margin of the roll as directed, 102, No. 1.*]

11. *Judgment for Plaintiff in Case or Trover.*

Same as in assumpsit, ante, 102, No. 1.

12. *Judgment for Plaintiff, in Trespass.*

Same as in assumpsit, ante, 102, No. 1.

13. *Judgment for Plaintiff, in Replevin.*

See forms, post, Book 3, Part 1, Chap. 2.

14. *Judgment for Plaintiff, in Ejectment.*

See forms, post, Book 3, Part 1, Chap. 1.

15. *Judgment where several Issues, and all found for Plaintiff.*

Same as in ordinary cases where there is but a single Issue ; see the preceding forms.

16. *Judgment for Plaintiff, upon a Plea of Tender as to Part, and Non-assumpsit as to residue.*

Same as in ordinary cases in assumpsit. See the form, ante, 102, No. 1.

17. *Judgment where one Issue is found for Plaintiff, and another for Defendant.*

[Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, but state the judgment thus:] Therefore it is considered that the plaintiff do recover against the defendant his said damages, costs and charges, by the jurors aforesaid in form aforesaid assessed, and also £—— for his said costs and charges by the said court here adjudged of increase to the plaintiff and with his assent, according to the form of the statute in such case made and provided ; which said damages, costs and charges amount in the whole to £—— ; and the defendant in mercy &c., (so state the judgment according to the nature of the action ; see the form in debt, ante, No. 5 ; in covenant, ante, No. 9 ; in detinue, ante, No. 10 ; in trespass, &c. ante, No. 12.) And the plaintiff is also in mercy, for his false claim against the defendant as to the premises whereof the defendant is acquitted by the said jury in form aforesaid : and let the defendant go thereof without day &c.

[Write in the margin as directed at the end of the form, ante, 102, No. 1.]

18. *Judgment on a verdict for Plaintiff on one count, and for Defendant on another, with a Nolle prosequi as to a third count, found for Plaintiff, on which no damages were assessed.*

[Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, to the end of the statement of the postea, and then thus :] But because the jurors aforesaid have not assessed any damages, on occasion of the not performing of the said last-mentioned promise, the plaintiff saith that he will not further prosecute his suit in that behalf against the defendant. And hereupon the plaintiff prays the judgment of the court upon the premises aforesaid : Therefore it is considered by the court here that the plaintiff do recover against the defendant his said damages, costs, and charges, &c. (as ante, 102, No. 1.) And as to the several promises and undertakings in the said declaration secondly and lastly above-mentioned, let the defendant be acquitted, and go thereof without day &c. And it is further considered by the court here, that the defendant do recover against the plaintiff £—— for his costs and charges by him about his defence in this behalf as to [the several promises in the said declaration secondly and lastly above-mentioned,] laid out and expended, by the court here adjudged to the defendant and with his assent, according to the form of the statute in such case made and provided (a), and that the defendant have execution thereof &c.

[Write in the margin as directed at the end of the form, ante, 102, No. 1.]

(a) The 3 & 4 Will. 4, c. 42, s. 33, entitled the defendant to and to have judgment for and recover these costs. But query if there be any entry of a judgment for same where

the defendant's costs do not exceed plaintiff's upon the other issues found against defendant. See 2 Chit. Ar. Pr. Book 4, Part 1, Chap. 25.

19. *Judgment where one Defendant is found guilty and another acquitted, and the Judge certifies to deprive the acquitted Defendant of his Costs (a).*

[Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, to the end of the statement of the *postea*, then state the judge's certificate on the judgment thus:] And hereupon the right honourable —, [or "sir — knight," the chief justice [or "chief baron," or "justice," or "baron,"] within-mentioned, according to the form of the statute in such case made and provided, on the — day of —, A.D. —, certifies upon this record under his hand, that there was reasonable cause for making the said *E. F.* a defendant in this action. Therefore it is considered that the plaintiff do recover against the said *C. D.* his said damages, costs and charges by the jurors aforesaid in form aforesaid assessed, and also the sum of £— for his said costs and charges by the court here adjudged of increase to the plaintiff, and with his assent; which said damages, costs and charges in the whole amount to £—; and the said *C. D.* in mercy [&c. so state the judgment according to the nature of the action; see the form in debt, ante, No. 5; in covenant, ante, No. 9; in detinue, ante, No. 10; in trespass &c. ante, No. 12.] It is also considered by the said court here, that the plaintiff take nothing by his said writ as against the said *E. F.*, but that he and his pledges (b) to prosecute be in mercy &c., and that the said *E. F.* do go thereof without day &c.

20. *The like, where the Judge does not so certify (c).*

[Proceed as in the preceding form to the end, and then thus:] And it is further considered by the court here, that the said *E. F.* do recover against the plaintiff £— for his costs and charges by him about his defence in this behalf laid out and expended by the court here adjudged to the said *E. F.*, and with his assent, according to the form of the statute in such case made and provided, and that the said *E. F.* have execution thereof, &c.

21. *Judgment where there are Issues in fact and in law, and the Issue in fact was tried first, and found for the Plaintiff, and the Demurrer was afterwards decided for Defendant, and it went to the whole Cause of Action, and Plaintiff's Costs exceed Defendant's.*

[Proceed as in the entry of the judgment as usual, to the end of the *postea*, and then thus:] But because it is unknown to the court here whether or not the defendant will be convicted of the premises aforesaid, whereof the parties aforesaid have put themselves upon the judgment of the court, therefore let the giving of the judgment in this behalf against the defendant be stayed until the issue aforesaid whereon the said parties have put themselves upon the judgment of the court shall have been ad-

(a) The 3 & 4 Will. 4, c. 42, s. 32, allows the judge so to certify. See the form of the judgment where one defendant suffered judgment by default, post.

(b) It should seem that the statement as to the pledges is no longer re-

quisite in actions commenced by the process prescribed by the 2 Will. 4, c. 39.

(c) The 3 & 4 Will. 4, c. 42, s. 32, gives the acquitted defendant his costs in all personal actions when the judge does not so certify.

judged and determined: And because the court here are not yet advised what judgment to give of and upon the premises whereon the parties aforesaid have put themselves upon the judgment of the court, a day is given for the said parties here until — to hear judgment thereupon, for that the said court here are not yet advised thereof, &c. At which day come here the parties aforesaid by their respective attornies aforesaid, whereupon all and singular the premises aforesaid, whereof the parties have put themselves upon the judgment of the court, being seen and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said [third] plea of the defendant by him above pleaded is sufficient in law. Therefore it is considered that the plaintiff take nothing by his writ, but that he be in mercy &c., and that the defendant go thereof without day &c: And because the costs and charges of the plaintiff, by him about his suit on occasion of the said [second] plea in this behalf laid out and expended, exceed the costs and charges of the defendant by him laid out and expended about his defence upon and under his said [first] and [third] pleas by the sum of £——: Therefore it is further considered by the court here, that the plaintiff do recover against the defendant the said sum of £—— for his said costs and charges by him laid out and expended about his suit on occasion of the said [second] plea by the court here adjudged to the plaintiff, and with his assent, according to the form of the statute in such case made and provided, and that the plaintiff have execution thereof, &c.

22. *Judgment for Plaintiff, with Suggestions of Deaths, &c.*

[See the form, post, Book 4, Part 1, Chap. 31.]

23. *Judgment for the Defendant in general.*

[Commence and proceed in the entry of the judgment as in the form, ante, 102, No. 1, but state the judgment itself thus:] Therefore it is considered that the plaintiff take nothing by his said writ, but that he be in mercy &c., and that the defendant do go thereof without day &c. And it is further considered by the court here that the defendant do recover against the plaintiff £—— for his costs and charges by him about his defence in this behalf laid out and expended, by the court here adjudged to the defendant, and with his assent, according to the form of the statute in such case made and provided, and that the defendant have execution thereof &c.

[In the margin of the Roll opposite the words "Therefore it is considered," &c., write "Judgment signed the — day of —, A. D. —."]

[This form is applicable, though there be several issues which are all found for the defendant.]

[See 1 Chit. Ar. Pr. 335.]

24. *Docket Paper of Judgment (a).*

The entry of P. A. gentleman, one &c., on the — day of —, A. D. —.

(Venue.) Judgment in debt, on verdict between A. B. plaintiff and C. D. defendant, for £—— debt, and £—— costs.	}	Roll ——
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(a) The docketting of judgments under 4 & 5 W. & M. c. 45, is no longer requisite. Registration has been substituted for it by 2 & 3 Vict. c. 16.

(*Venue.*) Judgment in *assumpsit*, [*&c. as the case may be*] on verdict between *A.B.* plaintiff and *C.D.* defendant, }
for £—— damages, and £—— costs. }
[*See 1 Chit. Ar. Pr. 196.*]

25. Register of Judgment, &c., under 1 & 2 Vict. c. 110, s. 19.

Filed the [10th] day of } [September, 1839,] By } [George Johnson, No. 7, King's Bench Walk, Temple, London.] (Signature and Address of Attorney.)	JUDGMENT, DECREE, ORDER, OR RULE.
	A [Judgment] of the Court of [Queen's Bench,] Dated the [14th] day of [September, 1839.]
	TITLE OF THE CAUSE OR MATTER IN WHICH THE SAME HAS BEEN OBTAINED.
	H. B. v. J. L. and C. L.

NAME, &c. OF THE PERSON WHOSE ESTATE IS INTENDED TO BE AFFECTED.

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.
L.	J.	[Manchester.]	J. L., [Livery Stable Keeper.]

ACCOUNT OF THE DEBT, DAMAGES, COSTS, OR MONIES THEREBY
RECOVERED OR ORDERED TO BE PAID.

	£	s.	d.
Account of [Debt]	101	12	6
Account of [Costs]	76	2	6

26. Memorial of Registry of Judgment, in Middlesex or Yorkshire.

A memorial to be registered pursuant to the statute, &c.

Of a judgment in her Majesty's Court of Queen's Bench, [*or "Common Pleas," or "Exchequer of Pleas,"*] of the —— day of ——, A. D. ——, between *A. B.* plaintiff and *C. D.* defendant, in an action of debt for £——, and —— shillings damages [*or in assumpsit, "in an action on promises, damages, &c. £——, costs of increase £——, in all £——," or as the action is.*] [*Roll ——.*]
[*See 1 Chit. Ar. Pr. 338.*]

27. Certificate of the Master thereon.

I do hereby certify, that judgment was signed in the above cause the —— day of ——, 1840. [*Master's name.*]

28. Affidavit of Signature.

E. F. of ——, maketh oath and saith, that he was present and did see *L. B.*, esquire, one of the masters of the court of [Queen's Bench], sign the certificate of the judgment in the memorial above mentioned.
Sworn [*&c. See Index, tit. "Jurat."*] *E. F.*

SECTION III.

WRIT OF ERROR.

1. *From the Queen's Bench, Common Pleas, or Exchequer, to the Exchequer Chamber* (a), 109 to 125.
2. *To the House of Lords after the Affirmance or Reversal in the Exchequer Chamber*, 126 to 135.
3. *From Inferior Courts of Record to the Queen's Bench*, 136 to 141.
4. *To the House of Lords after Judgment of Inferior Court affirmed, &c. in Queen's Bench*, 141.
5. *Coram Nobis or Coram Vobis*, 142 to 149.

1. WRIT OF ERROR FROM THE QUEEN'S BENCH, COMMON PLEAS, OR EXCHEQUER, TO THE EXCHEQUER CHAMBER.

1. *Præcipe for the Writ.*

—— to wit. Writ of error for C. D., at the suit of A. B., on a judgment in debt, [*or as the form of action was,*] in the Queen's Bench, [*or "in the Common Pleas," or "Exchequer," as the case may be,*] returnable on the —— day of ——, A. D. 1840.

D. A. attorney. ——, 1840.

[See 1 Chit. Ar. Pr. 357.]

2. *The Writ.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to our right trusty and well-beloved the Right Honourable Thomas Lord Denman, our chief justice assigned to hold pleas in our court before us, [*if from the C. P. "to our right trusty and well-beloved Sir Nicholas Conyngham Tindal, knt., our chief justice of the Common Bench," if from the Exchequer "to our treasurer and barons of our Exchequer,"*] greeting: Forasmuch as in the record and proceedings, and also in the giving of judgment in a plaint which was in our court before us, [*if from the C. P. "before you and your companions our justices of the Bench," if from the Exchequer, "before you the said barons in our court of the said Exchequer"*] between A. B. and C. D. of a plea of debt (*or as the form of action was*), as it is said manifest error hath intervened, to the great damage of the said C. D., as by his complaint we are informed. And whereas (b) by a statute made in our parliament at a session thereof holden at Westminster, in the county of Middlesex, in the first year of the reign of William the Fourth, intituled, "An Act for the more effectual Administration of Justice in England and Wales," it was (amongst other things) enacted, that writs of error, upon any judgment given by any of our Courts of Queen's Bench, Common Pleas, and Exchequer, should thenceforth be made returnable only before the judges, or judges and barons, as the case might be, of the other two courts in the Exchequer Chamber, any law or statute to the contrary notwithstanding; that a transcript of the record only should be annexed to the return of the writ, and the Court of Error, after errors

(a) See Index, tit. "*Jurat.*"

(b) The forms usually contain this

recital of the statute, but it seems unnecessary.

were duly assigned, and issue in error joined, should, at such time as the judges should appoint, either in term or vacation, review the proceedings, and give judgment as they should be advised thereon, and such proceedings and judgment, as altered or affirmed, should be entered on the original record; and such further proceeding as might be necessary thereon should be awarded by the court in which the original record remained; from which judgment in error no writ of error should lie or be had, except the same were made returnable in the High Court of Parliament, as in the said act is more fully contained: We therefore, being willing that the said error, if any there be, should in due manner be corrected according to the form of the statute aforesaid, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you distinctly and openly send, under your seal, to our justices of the Bench and the barons of our Exchequer of the degree of the coif [*if from the Common Pleas*, "to our justices assigned to hold pleas in our court before us, and the barons of our Exchequer of the degree of the coif," *if from the Exchequer*, "to our justices assigned to hold pleas in our court before us, and our justices of the Common Bench,"] in the Exchequer Chamber aforesaid, on —, the — day of — next ensuing, a transcript of the record and proceedings of the plaint aforesaid, with all things touching the same, and this writ, that the said transcript and proceedings being viewed and examined by the said justices and barons [*if from the Exchequer, omit "and barons"*] they may cause to be further done thereupon what of right and according to the form of the statute aforesaid ought to be done. Witness ourself at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 357.]

3. Note of Allowance.

C. D. }
 ats. } Debt [*or as the form of action was.*]
 A. B. }

I have allowed a writ of error in this cause, this — day of —, 1839. One of the grounds of error which will be argued is, that [*here state some particular ground of error.*] M. A.

[See 1 Chit. Ar. Pr. 357.]

4. Note of Bail for the Master.

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

— term, — Vic.

C. D. } Error to the Exchequer Chamber.

ats. } Judgment for £—.

A. B. } Bail, B. B. of —, tailor, and

J. B. of the same place, butcher.

D. A. defendant's attorney.

[See 1 Chit. Ar. Pr. 365.]

5. Recognizance of Bail.

You B. B. and J. B. do jointly and severally acknowledge to owe unto A. B. the sum of £— (a), to be levied upon your several lands and tenements, goods and chattels, upon condition that C. D. shall prosecute the writ of error herein into the Court of Exchequer Chamber with effect,

(a) As to the amount see 1 Chit. Ar. Pr. 365.

or that if the judgment given in the Court of Queen's Bench [or "C. P." or "Exch. of Pleas"] herein be affirmed in the Court of Exchequer Chamber, he shall satisfy the aforesaid *A. B.* as well the sum of £——, the amount of the judgment so as aforesaid given herein (*a*), as also all such costs and damages, sum and sums respectively, as shall be awarded for delay of execution by reason of the writ of error herein. And if he fail to do so, you *B. B.* and *J. B.* undertake to do it for him.

[See 1 Chit. Ar. Pr. 365.]

6. *Recognizance of Bail in Error in Ejectment.*

Be it remembered, that *B. F.*, on the —— day of ——, in the —— year of the reign of our sovereign lady Victoria, and before *T. M.*, one of the commissioners appointed for taking special bail in and for the county of ——, at ——, in the said county, and acknowledged himself to owe unto *John Doe*, a debtor to our sovereign lady the now queen, the sum of £——, to be paid to the said *John Doe*, his attorney, executors, administrators, or assigns, and if the said *B. F.* do not pay the same, then he consents that the said sum of money shall be levied and recovered of the lands and tenements, goods and chattels, of him the said *B. F.* for the use of the said *John Doe*, his executors, administrators, or assigns. The condition of this recognizance is such, that whereas Sir *M. H. N.*, Bart., hath brought a writ of error upon a judgment recovered against him in her majesty's Court of Exchequer at Westminster, for the sum of £——, damages in ejectment by the above-named *John Doe*, as by the record thereof now thereon remaining it doth and may more fully appear; which said writ of error is returnable in the chamber of council nigh the said Exchequer, called the Exchequer Chamber, on —— the —— day of —— last. If therefore the said Sir *M. H. N.* do prosecute the said writ of error with effect, and also do pay and satisfy (if the said judgment be affirmed, or Sir *M. H. N.* become nonsuited in the said writ of error, or suffer the same through his default to be discontinued,) the damages aforesaid recovered by the said judgment, and do also pay and satisfy the sum of £——, being double the yearly value of the said premises, and also such further costs and damages as shall be awarded for delay of execution, by reason of the said writ of error, then this recognizance to be void, otherwise to remain in full force and virtue.

7. *Notice of Bail.*

[The forms are the same as those on an arrest, post, Book 1, Part 2, Chap. 1, s. 8, except after the words "that special bail was this day put in," proceed "with ——, one of the masters of the Court of ——, upon the writ of error in this cause, before," &c.]

[See 1 Chit. Ar. Pr. 366.]

7. *Affidavit of Sufficiency of Bail, to accompany the Notice.*

[Same as form after an arrest, post, Book 1, Part 2, Chap. 1, s. 8, except after "one of the bail of the above-named defendant," insert "upon the writ of error in this cause."]

[See 1 Chit. Ar. Pr. 366.]

(*a*) In the case of a penalty the recognizance is not taken for double the sum recovered, but for double the sum really due, and double the costs.

8. *One Day's Notice of Exception, where the Affidavits have been made pursuant to Rule Trinity Term, 1 Will. 4, Reg. 3.*

[Same as form after an arrest, post, Book 1, Part 2, Chap. 1, s. 8, except that instead of "in this cause," say "upon the writ of error in this cause."] [See 1 Chit. Ar. Pr. 366.]

9. *Notice requiring Justification at a Judge's Chambers. Affidavit, &c. to procure leave to add another Bail.*

[These are similar to those after an arrest, post, Book 1, Part 2, Chap. 1, s. 8, except that instead of "in this cause," insert "upon the writ of error in this cause."] [See 1 Chit. Ar. Pr. 366.]

10. *Rule for better Bail.*

A. B. } Unless the plaintiff in the writ of error in this cause puts in
v. } better bail within four days next after notice hereof to be given
C. D. } to the said plaintiff or his attorney, execution will issue. M. A.

[See 1 Chit. Ar. Pr. 366.]

11. *Notice of Justification.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that B. B. and J. B., the bail already put in upon the writ of error in this cause, and of whom you have before had notice, will on — next justify themselves in open court at Westminster Hall, in the county of Middlesex, [if at chambers see the form, post, Book 1, Part 2, Chap. 1, s. 8,] as good and sufficient bail for the above-named defendant. Dated the — day of —, 1840.

To Mr. P. A.,
plaintiff's attorney.

Your's, &c. D. A.
defendant's attorney.

[See 1 Chit. Ar. Pr. 366.]

12. *Affidavit of Service of Notice of Justification.*

[Same as after an arrest, post, Book 1, Part 2, Chap. 1, s. 8.]

13. *Rule of Allowance.*

[Same as after an arrest, post, Book 1, Part 2, Chap. 1, s. 8.]

14. *Summons to dispense with Bail in Error.*

C. D. } [Commence the summons as usual, and let it be,] to show cause
v. } why the plaintiff in the said writ of error should not be at liberty
A. B. } to proceed in the said writ of error without bail or recognizance,
Is error. } on his undertaking to prosecute his said writ of error without
delay, and why the said writ of error, until the determination thereof,
shall not operate as a stay of execution against the said plaintiff.

[See 1 Chit. Ar. Pr. 364.]

15. *Entry of the Judgment and Docket.*

[*Same as ante*, 102, 108.]

[*See 1 Chit. Ar. Pr.* 368.]

16. *Transcript.*

This is a mere copy of the Roll, including the Judgment.

[*See 1 Chit. Ar. Pr.* 368.]

17. *The Return of the Chief Justice of the Q. B.*

The answer of the Right Honourable Thomas Lord Denman, the chief justice within named.

The transcript of the record and proceedings whereof mention is within made, with all things touching the same, I certify to the justices and barons within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

DENMAN.

[*See 1 Chit. Ar. Pr.* 367, 368.]

18. *The Return of Chief Justice of C. P. or Chief Baron of the Exchequer.*

The answer of Sir Nicholas Conyngham Tindal, knt., the chief justice within named, [*if in Exchequer*, "of James Lord Abinger, chief baron of the Court of Exchequer."] The transcript of the record of proceedings in the plaint whereof mention is within made follows in these words.

19. *Entry of Non-pros for not transcribing.*

Afterwards, to wit, on the — in the — year of the reign aforesaid, our lady the queen hath sent to her right trusty and well-beloved the Right Honourable Thomas Lord Denman, her chief justice assigned to hold pleas in the court of our said lady the queen before the queen herself, [*if in the C. P.* "to Sir Nicholas Conyngham Tindal, knt., her chief justice of the Common Bench," *if in the Exch.* "to the barons of her Exchequer,"] her writ close in these words, to wit: Victoria, [*&c. proceed, copying the writ to the end; then continue the entry in a new paragraph, thus:*]

And a day is thereupon given to the said C. D. here, until the — next ensuing (*a*), that is to say, for the said C. D. to certify the said record. At which day comes here the said A. B. by P. A. his attorney; and the said C. D. (although solemnly called) doth not come, nor hath he certified the said record, nor doth he further prosecute his said writ of error, but therein makes default; therefore it is considered that the said C. D. take nothing by his writ aforesaid, but that he be in mercy &c., and that the said A. B. do go thereof without day &c.

[*See 1 Chit. Ar. Pr.* 368.]

20. *Non-pros in Exchequer Chamber for not assigning Errors.*

Pleas in the Exchequer Chamber at Westminster, before Sir Nicholas Conyngham Tindal, knight, chief justice of the Common Bench of our

(*a*) See R. H. 4 W. 4, reg. 10; 1 Chit. Ar. Pr. 369, 370.

sovereign lady the queen, James Lord Abinger, chief baron of the Exchequer of our said lady the queen of the degree of the coif; Sir —, knight; Sir —, knight; Sir —, knight; and Sir —, knight, the four other justices of the Common Bench of our said lady the queen; and also before Sir —, knight; Sir —, knight; Sir —, knight; and Sir —, knight, the four other Barons of the Exchequer of our said lady the queen, of the degree of the coif, [*in error from the Common Pleas it will be* “before the justices of the Queen’s Bench and the barons of the Exchequer,” *from the Exchequer,* “before the justices of the Queen’s Bench and Common Pleas,” *naming them as above,*] on — the — day of —, in the — year of the reign of Queen Victoria.

Our sovereign lady the queen hath sent to her right trusty and well-beloved the Right Honourable Thomas Lord Denman, her chief justice assigned to hold pleas in the court of our lady the queen before the queen herself, [*if in the Common Pleas,* “to Sir Nicholas Conyngham Tindal, knight, her chief justice of the Common Bench,” *if in the Exchequer,* “to the barons of her Exchequer,”] her writ close in these words, to wit: Victoria [*&c. proceed, copying the writ of error to the teste, exclusive, and then thus:*] At which day, by virtue of the said writ, a transcript of the record and proceedings in the plaint aforesaid, with all things concerning the said judgment, are brought before the justices of the Common Bench of our lady the queen, and the barons of the Exchequer of our said lady the queen, [*if in the Common Pleas,* “before the justices aforesaid, to hold pleas in the court of our lady the queen, before the queen herself, and the barons, &c.,” *if in the Exchequer,* “before the justices aforesaid, to hold pleas in the court of our said lady the queen, before the queen herself, and the justices of the Common Bench of our lady the queen,”] aforesaid, into the Exchequer Chamber of our said lady the queen, in a certain schedule to the said writ annexed, [*in Common Pleas or Exchequer, omit the words* “in a certain schedule, &c.”] according to the exigency of the said writ.

And hereupon come into court here, in the said Exchequer Chamber, as well the said *A. B.* as the said *C. D.* in their proper persons; and the said *A. B.* prays that the said *C. D.* may assign error or errors in the record or proceedings aforesaid; whereupon a day is given to the said *C. D.* to assign error or errors in the record or proceedings aforesaid, until —, the — day of — next, &c.; the same day is given to the said *A. B.* here.

Pleas in the Exchequer Chamber at Westminster &c. [*as in the first placita, supra, altering the date*] on [*the day above given to assign errors.*]

At which day comes into court here, in the said Exchequer Chamber, the said *A. B.* in his proper person; but the said *C. D.*, although solemnly called, doth not come, but makes default, nor doth he further prosecute the said writ of error against the said *A. B.* Therefore it is considered that the said *C. D.* take nothing by his said writ of error, but that he be in mercy &c., and that the said *A. B.* do go thereof without day &c.; and it is further considered, that the said *A. B.* do recover against the said *C. D.* £—— for his damages, costs, and charges, which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error, by the court here adjudged to the said *A. B.*, according to the form of the statute in such case made and provided, and with his assent.

21. *Entry thereof upon the original Judgment Roll.*

Afterwards, to wit, on (*the teste of the writ of error*) our said lady the

queen sent to her right trusty and well beloved the Right Honourable Thomas Lord Denman, her chief justice assigned to hold pleas in the court of our said lady the queen, before the queen herself, [*if in the Common Pleas, "Sir Nicholas Conyngham Tindal, knight, her chief justice of the Common Bench," if in the Exchequer, "to the barons of her Exchequer,"*] her writ close in these words, to wit: Victoria [*&c. proceed, copying the writ of error to the teste, exclusive, and then thus :*] At which day, by virtue of which said writ, a transcript of the record and proceedings in the plaint aforesaid were thereupon brought before the justices of the Common Bench of our said lady the queen, and the barons of the Exchequer of our said lady the queen aforesaid, [*if in the Common Pleas or Exchequer, alter this as in last form,*] into the Exchequer Chamber of our said lady the queen, in a certain schedule to the said writ annexed, [*in Common Pleas or Exchequer omit the words "in a certain schedule, &c."*] according to the exigency of the said writ. And thereupon came into the said Court of Exchequer Chamber as well the said *A. B.* as the said *C. D.* in their proper persons; and the said *A. B.* prayed that the said *C. D.* might assign error or errors in the record and proceedings aforesaid; and thereupon a day was given to the said *C. D.* to assign error or errors in the record and proceedings aforesaid, until —, the — day of — then next, &c., the same day was given to the said *A. B.* there. At which day came into the said Court of Exchequer Chamber the said *A. B.* in his proper person; but the said *C. D.*, although solemnly called, came not, but made default; nor did he further prosecute the said writ of error against the said *A. B.* Therefore it was considered by the said Court of Exchequer Chamber that the said *C. D.* should take nothing by his said writ of error, but that he should be in mercy &c.; and that the said *A. B.* should go thereof without day &c.; and it was further considered that the said *A. B.* should recover against the said *C. D.* £—— for his damages, costs, and charges, which he had sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error, by the said Court of Exchequer Chamber adjudged to the said *A. B.*, according to the form of the statute in such case made and provided, and with his assent &c.

[*See 1 Chit. Ar. Pr. 121.*]

22. *Fi. fa. thereon, in Q. B.*

Victoria [*&c. same as usual, post, adapting it to the form of action, to the words "whereof the said C. D. is convicted, as appears to us of record" inclusive, and then thus :*] together with interest upon the said sum of — at the rate of £4 per centum per annum, from the — day of —, in the year of our Lord —, on which day the judgment aforesaid was entered up^(a); and also £—— which in our Court of Exchequer Chamber, at Westminster, before our justices of the Bench, and the barons of our Exchequer of the degree of the coif, were adjudged* to the said *A. B.* according to the form of the statute in such case made and provided, for his damages, costs, and charges which he had sustained and expended on occasion of the delay of execution of the judgment aforesaid,

(a) An application to the Court of Exchequer Chamber for interest appears to be unnecessary since 1 & 2 Vict. c. 110, s. 17, except in cases of judgments entered before 1st October,

1838, in which case, under 1 & 2 Vict., interest can be levied from that day only. If interest be allowed by the court of error, the above clause as to interest should be omitted.

on pretence of prosecuting our writ of error brought thereupon by the said *C. D.* against the said *A. B.*, because the said *C. D.* did not prosecute the said writ of error with effect; whereof the said *C. D.* is also convicted, as by the record and proceedings of our said justices† and barons, before them had in the premises also appears to us of record; and have the said monies, with interest as aforesaid, before us at Westminster immediately after the execution hereof [or “on —”] to be rendered to the said *A. B.* for his damages, costs, and charges [and interest] aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and how you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof; and have there then this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 380.]

23. *The like in C. P.*

Victoria [*&c. same as usual, post, adapting it to the form of action, to the words “whereof the said C. D. is convicted,” inclusive, and then thus:*] together with interest upon the said sum of £— (*amount of judgment*) at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up: (a) And also £—, which in our Court of Exchequer Chamber at Westminster, before our justices assigned to hold pleas in our court before us, and the barons of our Exchequer of the degree of the coif, were adjudged [*&c. as in the preceding form, from the * to the †,*] barons before them had in the premises also appears to us of record; and have those monies before our justices at Westminster immediately after the execution hereof [or “on the — day of — next,”] to be rendered to the said *A. B.* for his damages, costs, and charges aforesaid; and that you do all such things as by the statute passed in the second year of this reign you are authorized and commanded to do in this behalf: and how you shall have executed this our writ make appear to our justices at Westminster immediately after the execution thereof; and have there this writ. Witness — (*name of chief justice of C. P.*), at Westminster, the — day of —, in the — year of our reign.

24. *The like in Exchequer.*

Victoria [*&c. same as usual, post, to the words “as by inspecting the rolls of our said Exchequer,” inclusive, and then thus:*] “together with interest upon the said sum of £— (*amount of judgment*) at the rate of £4 per cent. per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up (a): And also £— which in our Court of Exchequer Chamber at Westminster, before our justices assigned to hold pleas in our court before us and our justices of the Bench, were adjudged [*&c. as in the form, ante, 116, No. 22, from the * to the †*] before them had in the premises also appears to us by inspecting the rolls of our said Exchequer; and have those monies before the barons of our said Exchequer at Westminster immediately after the execution hereof [or “on —”], to be then and there paid to the said *A. B.* or his attorney on his behalf; and that you do all such things as by the sta-

(a) See note (a) last page.

queen sent to her right trusty and well beloved the Right Honourable Thomas Lord Denman, her chief justice assigned to hold pleas in the court of our said lady the queen, before the queen herself, [*if in the Common Pleas*, "Sir Nicholas Conyngham Tindal, knight, her chief justice of the Common Bench," *if in the Exchequer*, "to the barons of her Exchequer,"] her writ close in these words, to wit: Victoria [*&c. proceed, copying the writ of error to the teste, exclusive, and then thus :*] At which day, by virtue of which said writ, a transcript of the record and proceedings in the plaint aforesaid were thereupon brought before the justices of the Common Bench of our said lady the queen, and the barons of the Exchequer of our said lady the queen aforesaid, [*if in the Common Pleas or Exchequer, alter this as in last form,*] into the Exchequer Chamber of our said lady the queen, in a certain schedule to the said writ annexed, [*in Common Pleas or Exchequer omit the words "in a certain schedule, &c."*] according to the exigency of the said writ. And thereupon came into the said Court of Exchequer Chamber as well the said *A. B.* as the said *C. D.* in their proper persons; and the said *A. B.* prayed that the said *C. D.* might assign error or errors in the record and proceedings aforesaid; and thereupon a day was given to the said *C. D.* to assign error or errors in the record and proceedings aforesaid, until —, the — day of — then next, &c., the same day was given to the said *A. B.* there. At which day came into the said Court of Exchequer Chamber the said *A. B.* in his proper person; but the said *C. D.*, although solemnly called, came not, but made default; nor did he further prosecute the said writ of error against the said *A. B.* Therefore it was considered by the said Court of Exchequer Chamber that the said *C. D.* should take nothing by his said writ of error, but that he should be in mercy &c.; and that the said *A. B.* should go thereof without day &c.; and it was further considered that the said *A. B.* should recover against the said *C. D.* £—— for his damages, costs, and charges, which he had sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error, by the said Court of Exchequer Chamber adjudged to the said *A. B.*, according to the form of the statute in such case made and provided, and with his assent &c.

[See 1 Chit. Ar. Pr. 121.]

22. *Fi. fa. thereon, in Q. B.*

Victoria [*&c. same as usual, post, adapting it to the form of action, to the words "whereof the said C. D. is convicted, as appears to us of record" inclusive, and then thus :*] together with interest upon the said sum of — at the rate of £4 per centum per annum, from the — day of —, in the year of our Lord —, on which day the judgment aforesaid was entered up^(a); and also £—— which in our Court of Exchequer Chamber, at Westminster, before our justices of the Bench, and the barons of our Exchequer of the degree of the coif, were adjudged* to the said *A. B.* according to the form of the statute in such case made and provided, for his damages, costs, and charges which he had sustained and expended on occasion of the delay of execution of the judgment aforesaid,

(a) An application to the Court of Exchequer Chamber for interest appears to be unnecessary since 1 & 2 Vict. c. 110, s. 17, except in cases of judgments entered before 1st October,

1838, in which case, under 1 & 2 Vict., interest can be levied from that day only. If interest be allowed by the court of error, the above clause as to interest should be omitted.

on pretence of prosecuting our writ of error brought thereupon by the said *C. D.* against the said *A. B.*, because the said *C. D.* did not prosecute the said writ of error with effect; whereof the said *C. D.* is also convicted, as by the record and proceedings of our said justices† and barons, before them had in the premises also appears to us of record; and have the said monies, with interest as aforesaid, before us at Westminster immediately after the execution hereof [or “on —”] to be rendered to the said *A. B.* for his damages, costs, and charges [and interest] aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and how you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof; and have there then this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the — year of our reign.

[See 1 *Chit. Ar. Pr.* 380.]

23. *The like in C. P.*

Victoria [&c. *same as usual, post, adapting it to the form of action, to the words “whereof the said C. D. is convicted,” inclusive, and then thus:*] together with interest upon the said sum of £— (*amount of judgment*) at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up: (a) And also £—, which in our Court of Exchequer Chamber at Westminster, before our justices assigned to hold pleas in our court before us, and the barons of our Exchequer of the degree of the coif, were adjudged [&c. *as in the preceding form, from the * to the †,*] barons before them had in the premises also appears to us of record; and have those monies before our justices at Westminster immediately after the execution hereof [or “on the — day of — next,”] to be rendered to the said *A. B.* for his damages, costs, and charges aforesaid; and that you do all such things as by the statute passed in the second year of this reign you are authorized and commanded to do in this behalf: and how you shall have executed this our writ make appear to our justices at Westminster immediately after the execution thereof; and have there this writ. Witness — (*name of chief justice of C. P.*), at Westminster, the — day of —, in the — year of our reign.

24. *The like in Exchequer.*

Victoria [&c. *same as usual, post, to the words “as by inspecting the rolls of our said Exchequer,” inclusive, and then thus:*] “together with interest upon the said sum of £— (*amount of judgment*) at the rate of £4 per cent. per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up (a): And also £— which in our Court of Exchequer Chamber at Westminster, before our justices assigned to hold pleas in our court before us and our justices of the Bench, were adjudged [&c. *as in the form, ante, 116, No. 22, from the * to the †*] before them had in the premises also appears to us by inspecting the rolls of our said Exchequer; and have those monies before the barons of our said Exchequer at Westminster immediately after the execution hereof [or “on —”], to be then and there paid to the said *A. B.* or his attorney on his behalf; and that you do all such things as by the sta-

(a) See note (a) last page.

tute passed in the second year of our reign you are authorized and commanded to do in this behalf: and how you shall have executed this our writ make appear to the barons of our said Exchequer at Westminster immediately after the execution thereof, and have you there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the — year of our reign.

25. *Ca. sa. thereon, in Q. B.*

[Same as usual post, adapting it to the form of action, to the words "whereof the said C. D. is convicted," inclusive, and then thus:] as appears to us of record; together with interest, [proceed as in the *fi. ja. ante*, 116, No. 22, to the words, "also appears to us of record" inclusive,] and have there this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the — year of our reign.

[See 1 *Chit. Ar. Pr.* 385.]

26. *The like in C. P.*

[Same as usual, post, adapting it to the form of action, to the words "whereof the said C. D. is convicted," inclusive, and then thus: together with interest, [&c. proceed as in the *fi. fa. ante*, 116, No. 22, to the words "appears to us of record" inclusive,] and have there this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the — year of our reign.

27. *The like, in the Exchequer.*

[Same as usual, post, adapting it to the form of action, to the words, "as by inspecting the rolls of our said Exchequer," inclusive, and then thus:] together with interest, [&c. proceed as in the *fi. fa. ante*, 116, No. 22, to the words "also appears to us by inspecting the rolls of our said Exchequer," inclusive,] and have you there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the — year of our reign.

28. *Assignment of Common Errors.*

In the Exchequer Chamber.

C. D. Afterwards, that is to say, on the — day of —, A.D.
 v. —, before the justices of our lady the queen of the Bench, and
 A. B. the barons of the Exchequer of our said lady the queen of the
 In error. degree of the coif [if from the C. P. "before the justices of our
 lady the queen assigned to hold pleas in the court of our lady the queen
 before the queen herself, and the barons of the Exchequer of our said
 lady the queen, of the degree of the coif," if from the Exchequer, "before
 the justices of our lady the queen assigned to hold pleas in the court of
 our lady the queen, before the queen herself, and the justices of our lady
 the queen of the Bench,"] in the Exchequer Chamber at Westminster,
 comes the said C. D. by D. A. his attorney, and says, that in the record
 and proceedings aforesaid, and in giving the judgment aforesaid, there is
 manifest error in this, that the declaration aforesaid, and the matters
 therein contained, are not sufficient in law for the said A. B. to have or
 maintain his aforesaid action thereof against him the said C. D.; and also
 there is error in this, that the judgment aforesaid, by the record afore-

said, appears to have been given for the said *A. B.* to have or maintain his aforesaid action thereof against him the said *C. D.*, whereas by the law of the land the said judgment ought to have been given for the said *C. D.* against the said *A. B.* And the said *C. D.* prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.
[See 1 Chit. Ar. Pr. 370.]

29. Common Joinder in Error.

In the Exchequer Chamber.

On the — day of —, A. D. 1840.

A. B. } And hereupon the said *A. B.* by *P. A.* his attorney, comes
ats. } and says that there is no error, either in the record and pro-
C. D. } ceedings aforesaid, or in the giving the judgment aforesaid, and
In error. } he prays that the said justices and barons [*in error from the*
Exch., omit “and barons,”] in the Exchequer Chamber here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c. But because the said justices and barons [*in error from the Exchequer*, omit “and barons,”] in the Exchequer Chamber here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid here, until — —, to hear their judgment thereon, for that the said justices and barons [*in error from the Exchequer*, omit “and barons,”] in the Exchequer Chamber aforesaid are not yet advised thereof, &c.

[See 1 Chit. Ar. Pr. 372.]

30. Notice of the Case being set down for Argument (a).

In the Exchequer Chamber.

C. D. plaintiff, }
v. } In error.
A. B. defendant. }

Take notice, that the issue joined in this case is set down with the Clerk of the Errors for argument on — next, and that the same will be argued accordingly. Dated this — day of —, A. D. 1840.

To Mr. *P. A.*
plaintiff's attorney.

Your's &c.
D. A. defendant's attorney.

[See 1 Chit. Ar. Pr. 374, 375.]

31. Notice of Motion for Interest. (b)

In the Exchequer Chamber.

Between *C. D.* plaintiff, }
and } In error.
A. B. defendant. }

Take notice, that this honourable court will be moved, on — next,

(a) No entry of the proceedings is now requisite. See 1 Chit. Ar. Pr. 375.

(b) As the interest allowed by the Court of Exchequer Chamber is only £4 per cent., *Levy v. Langridge*, 4

M. & W. 337, this application is, since 1 & 2 Vict. c. 110, s. 17, not necessary, unless the judgment were entered up before 1st October, 1838, in which case 1 & 2 Vict. c. 111, allows interest from that day.

Pleas in the Exchequer Chamber, &c. [*as ante*, 114, No. 20, *altering the date, and then proceed on a new line, thus:*]

At which day come here into court in the said Exchequer Chamber, as well the said *C. D.* as the said *A. B.* in their proper persons, whereupon all and singular the premises being considered, and as well the record and proceedings aforesaid, and the judgment aforesaid thereon given, as also the cause for error above assigned, being by the court of our said lady the queen here diligently examined and fully understood, it appears to the said court of our said lady the queen here*, that the judgment aforesaid is not in anywise erroneous or defective, and that in the record and proceedings aforesaid there is not any error: Therefore it is considered, that the judgment aforesaid be in all things affirmed, and stand in its full force, strength, and effect, the said cause above for error assigned and alleged in anywise notwithstanding: And it is further considered, that the said *A. B.* recover against the said *C. D.* £——, by the court of our said lady the queen here adjudged to the said *A. B.*, and with his assent, according to the form of the statute in that case made and provided, for his damages, costs, and charges, which he hath sustained and expended, by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of the said writ of error.

[*See 1 Chit. Ar. Pr. 376, 377.*]

35. *Entry thereof on the original Judgment Roll.*

Afterwards, to wit, on (*the teste of the writ of error*) our said lady the queen sent to her trusty and well-beloved the Right Honourable Thomas Lord Denman, her chief justice assigned to hold pleas in the court of our said lady the queen before the queen herself, [*if from the Common Pleas or Exchequer alter this as directed, ante*, 115, No. 21,] her writ close in these words, to wit: Victoria, [*&c. copy the writ of error to the teste, exclusive, and then thus:*] By virtue of which said writ, a transcript of the record and proceedings in the plaint aforesaid were thereupon brought before the justices of the Common Bench of our said lady the queen, and the barons of the Exchequer of our said lady the queen, [*if from the Common Pleas or Exchequer, see ante*, 115, No. 21,] aforesaid, into the Exchequer Chamber of our said lady the queen, in a certain schedule to the said writ annexed, [*if in C. P. or Exch. omit the words, "in a certain schedule &c."*] according to the exigency of the said writ. And thereupon came into the said Court of Exchequer Chamber, as well the said *C. D.* as the said *A. B.* in their proper persons: and the said *C. D.* thereupon said, that in the record and proceedings, [*&c. copy the assignment of errors in the past tense.*] And thereupon the said *A. B.* said that there was no error, [*&c. copy the joinder in error and the curia advisari vult, in the past tense.*] At which day came into the said Court of Exchequer Chamber as well the said *C. D.* as the said *A. B.* in their proper persons. Whereupon all and singular the premises being considered, and as well the record and proceedings aforesaid, and the judgment aforesaid thereon given, as also the cause for error assigned as aforesaid, being by the said court of our said lady the queen there diligently examined and fully understood, it appeared to the said court [*&c. copy the judgment, stating it in the past tense.*]

[*See 1 Chit. Ar. Pr. 376, 377.*]

36. *Execution thereon.*

[*The form of a fi. fa. or ca. sa. after judgment of affirmance is the same as that after a non-pros for not assigning errors, see ante, 116, No. 22 to 27, except the substitution in the former, of the words "the said judgment being in our said Court of the Exchequer Chamber in all things affirmed," instead of the words "because the said C. D. did not prosecute the said writ of error with effect."*]

37. *Judgment of Reversal upon a Writ of Error by a Defendant.*

[*Same as the judgment of affirmance, ante, 120, No. 34, to the asterisk*, and then thus :*] that there is manifest error in the record and proceedings aforesaid, and in giving the judgment aforesaid: Therefore it is considered by the said Court of Exchequer Chamber, that the judgment aforesaid for the errors aforesaid, and for other errors in the said record and proceedings being, be reversed, annulled, and altogether holden for nought, and that the said C. D. be restored to all things which he hath lost by occasion of the said judgment &c.

[*The form of the entry thereof upon the original judgment roll is the same as that ante, 121, No. 35, except as to the judgment, which must be altered to correspond with the above form.*]

[*See 1 Chit. Ar. Pr. 376, 377.*]

38. *The like upon a Writ of Error, by a Plaintiff, in an Action of Debt.*

[*Same as the judgment of affirmance, ante, 120, No. 34, to the asterisk*, and then thus :*] that there is manifest error in the record and proceedings aforesaid, and in giving the judgment aforesaid: Therefore it is considered by the said Court of Exchequer Chamber, that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, be reversed, annulled, and altogether holden for nought; and that the said A. B. do recover against the said C. D. his debt aforesaid, and £—— as well for his damages which he hath sustained on occasion of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, by the said court of our said lady the queen now here adjudged to the said A. B. and with his assent; and that he have execution thereof.

[*The form of the entry thereof upon the original judgment roll is the same as that ante, 121, No. 35, except as to the judgment, which must be altered to correspond with the above form.*]

39. *Execution thereon.*

[*The execution is the same as the forms in debt, post, 150, &c., except instead of saying "in our court before us," say "in our Court of Exchequer Chamber at Westminster, before our justices of the bench and the barons of our Exchequer of the degree of the coif," or "in our Court of Exchequer Chamber at Westminster before our justices aforesaid, assigned to hold pleas in our court before us, and the barons of our Exchequer of the degree of the coif," or "in our Court of Exchequer Chamber*

at Westminster before our justices aforesaid assigned to hold pleas in our court before us and our justices of the Bench, according as the writ of error may have been from the Q. B., or C. P., or Exchequer.

[See 1 Chit. Ar. Pr. 380.]

40. *Judgment of Reversal, upon a Writ of Error by Plaintiff, in any other Action.*

[Same as the judgment of affirmance, 120, No. 34, to the asterisk*, and then thus:] that there is a manifest error in the record and proceedings aforesaid, and in giving the judgment aforesaid. Therefore it is considered by the said Court of Exchequer Chamber here, that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, be reversed, annulled, and altogether holden for nought; and that the said A. B. ought to recover against the said C. D. his damages on occasion of the premises.

41. *Entry thereof upon the original Judgment Roll, with award of Inquiry.*

[Same as the entry, ante, 121, No. 35, to the end of the judgment, and then on a new line, thus:]

Afterwards, to wit, on —, in the year last aforesaid, before our said lady the queen at Westminster comes [if in *Common Pleas* or *Exchequer*, omit "before our said lady the queen," &c. and insert "comes here,"] the said A. B. by his attorney aforesaid, and prays the writ of our said lady the queen to be directed to the said sheriff of —, commanding him that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what damages the said A. B. hath sustained as well by reason of the premises as for his costs and charges by him about his suit in this behalf expended; and it is granted to him, &c.; and thereupon the said sheriff is commanded that by the oath of twelve good and lawful men of his bailiwick he diligently inquire, [&c. conclude as in the ordinary form of an award of inquiry, see the respective forms, post.]

42. *Writ of Inquiry thereon.*

Victoria, [&c. proceed as in the ordinary form of an award of inquiry, see the form, post, to the words, "brought his suit, &c." inclusive.] And such proceedings were thereupon had in our said court, before us [if in *Common Pleas*, "before our justices," if in *Exchequer*, "before our barons of our Exchequer,"] at Westminster aforesaid, that it was considered by the same court that the said A. B. should take nothing by his plaint aforesaid; but that he and his pledges to prosecute (a) should be in mercy &c., and that the said C. D. should go thereof without day &c. And it was further considered by the same court, that the said C. D. should recover against the said A. B. £—— for his costs and charges by him laid out about his defence in that behalf, by the same court adjudged to the said C. D. and with his assent, according to the form of the statute in such case made and provided: and that the said C. D. should have execution

(a) Omit this as to the pledges, if not in the original judgment.

thereof &c. And thereupon the said *A. B.* afterwards brought and prosecuted our writ of error, in our Court of Exchequer Chamber at Westminster, before our justices of the Common Bench [*if in Common Pleas*, "before our justices assigned to hold pleas in our court before us,"] and the barons of our Exchequer of the degree of the coif [*if in Exchequer* "before our barons assigned to hold pleas in our court before us and our justices of the Bench,"] for the reversal of the said judgment; and such proceedings were thereupon had in our said Court of Exchequer Chamber at Westminster aforesaid, that it was considered by our said Court of Exchequer Chamber, that the judgment aforesaid, for certain errors assigned therein by the said *A. B.*, and for other errors in the record and proceedings aforesaid being, should be reversed, annulled, and altogether held for nothing; and the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises &c. Therefore, to the end that the said damages may be ascertained, and that the said *A. B.* may have judgment for the same and execution thereon, we command you, that by the oath of twelve good and lawful men of your bailiwick, [*&c. conclude as in a common writ of inquiry, for which see the respective forms, post.*]

43. *Entry on the original Judgment Roll of the Return of Writ of Inquiry, and final Judgment.*

[*The same as in ordinary cases, for which see post.*]

44. *Execution thereon.*

[*The same as in ordinary cases, for which see post, 148, &c.*]

45. *Scire Facias quare Restitutionem non.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——— greeting: Whereas *A. B.* lately in our court before us, [*or in C. P.* "before our justices," *or in Exchequer*, "before our barons of our Exchequer,"] at Westminster, by *P. A.* his attorney, [*or if in person*, "in his own proper person,"] complained of *C. D.* who was summoned [*as in the commencement of declaration*] to answer the said *A. B.* in an action of trespass [*or as the action was*] and such proceedings were thereupon had in our said court, that afterwards by the consideration and judgment of the said court the said *A. B.* recovered against the said *C. D.* in that action £—— for his damages which he had sustained, as well by reason of certain trespasses alleged to have been committed by the said *C. D.* as for his costs and charges by him about his suit in that behalf expended: (a) and thereupon afterwards the said *C. D.* brought and prosecuted our writ of error in our Court of Exchequer Chamber at Westminster, before our justices of the Common Bench, and our barons of our Exchequer, of the degree of the coif [*if in the Common Pleas*, "before our justices assigned to hold pleas in our court before us, and our barons of our Exchequer of the degree of the coif," *if in the Exchequer*, "before our justices assigned to hold pleas in our court before us, and our justices of the Bench at Westminster,"] for the reversal of the said judgment; and such proceed-

(a) This must of course correspond with the original judgment.

ings were thereupon had in our said Court of Exchequer Chamber at Westminster aforesaid, that by our said Court of Exchequer Chamber it was considered that the judgment aforesaid, for certain errors therein by the said *C. D.* assigned, and for other errors in the record and proceedings being, should be reversed, annulled, and altogether holden for nought, and that the said *C. D.* should be restored to all things which he had lost by occasion of the said judgment, &c. as appears to us of record.* And now, on the behalf of the said *C. D.* in our said court before us [*or if in C. P. or Exch. vide supra,*] we have been informed that the said *A. B.* hath had his execution of the damages aforesaid, on pretence of the said judgment of our court before us, [*or if in C. P. or Exch. vide supra,*] and is yet possessed thereof; and the said *C. D.* hath thereupon humbly besought us to provide him a proper remedy in this behalf: Now we, being willing that what is just in this behalf should be done, command you, that by honest and lawful men of your bailiwick you make known to the said *A. B.* that he be before us [*if in Common Pleas,* "before our justices at Westminster," *if in Exchequer,* "before our barons of our Exchequer at Westminster,"] on —, to show if he hath or knoweth of any thing to say for himself why the said *C. D.* ought not to have restitution of the damages aforesaid, according to the force, form, and effect of the judgment of our Court of Exchequer Chamber aforesaid, and further to do and receive what our said court before us [*or if in C. P. or Exch. vide supra*] shall then and there consider of him in this behalf; and have there then the names of those by whom you shall so make known to him, and this writ. Witness, — (name of chief justice or chief baron), at Westminster, the — day of —, in the — year of our reign.

[*Sec 1 Chit. Ar. Pr. 380.*]

46. *Writ of Restitution.*

[*Same as the last form, to the asterisk,* and then thus:*] And whereas the said *A. B.* hath had his execution of the damages aforesaid, on pretence of the said judgment of our court before us [*or if in C. P. or Exch. vide last form*], and is yet possessed thereof, as we have been given to understand and be informed: therefore we command you, that if it can be made appear to you that the said *A. B.* hath had his execution of the damages aforesaid by virtue of the judgment aforesaid, then without delay you cause the said *C. D.* to have full restitution of the said £—; "and if you cannot cause him to have restitution thereof, then that you cause to be levied of the goods and chattels of the said *A. B.* in your bailiwick, the said sum of £—, and cause that money to be delivered without delay to the said *C. D.*; and in what manner you shall have executed this our writ make appear to us" [*or if in C. P. or Exch. vide the return in last form,*] and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the — year of our reign.

[*Or, instead of the words between the inverted commas, you may insert this clause:* "and if you cannot cause him to have restitution thereof, then that you take the said *A. B.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us (*or if in C. P. or Exch. see return in last form:*†) and in what manner you shall have executed this our writ make appear to us [*or if in C. P. or Exch. see supra*] on the day and at the place above written."]

[*Sec 1 Chit. Ar. Pr. 380.*]

II. WRIT OF ERROR TO THE HOUSE OF LORDS, AFTER AFFIRMANCE OR REVERSAL IN THE EXCHEQUER CHAMBER.

1. *Præcipe for the Writ.*

—— to wit: Writ of Error for *C. D.* at the suit of *A. B.* on a judgment in debt [*or as the form of action may be*] in the Q. B. [*or “C. P.” or “Exch. of Pleas,” as the case may be*] affirmed in the Exchequer Chamber, returnable immediately.

D. A. attorney. —, 1839.

[See 1 *Chit. Ar. Pr.* 381.]

2. *The Writ.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to our right trusty and well-beloved the Right Honourable Thomas Lord Denman, our chief justice assigned to hold pleas in our court before us [*or if from C. P. or Exch. as ante*, 110,] greeting: Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our court before us [*if from the C. P. or Exch. as ante*, 110,] of a plea of debt, [*or as the action may be*,] between *A. B.* and *C. D.*, a transcript of which said record and proceedings, by reason of error happening therein, we, according to the form of the statute in that case made and provided, caused to be brought before our justices of the Common Bench, and the barons of our Exchequer of the degree of the coif, in our Exchequer Chamber, [*if from C. P. or Exch. as ante*, 110,] and the judgment thereupon is affirmed [*or “reversed”*] as it is said manifest error hath intervened, to the great damage of the said *C. D.*, as by his complaint we are informed. We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if the judgment be thereupon given and affirmed [*or “if the judgment thereupon given for the said C. D. be reversed”*] then without delay you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to us in our present parliament [*or if the writ be sued out after prorogation and before the next meeting of parliament, then “to us in our present parliament, at the next session thereof,” or if after a dissolution, then “to us in our next parliament,”*] together with this writ; that the record and proceedings aforesaid being inspected, we may cause further to be done thereupon, with the assent of the lords spiritual and temporal in the same parliament, as of right, and according to the laws and customs of England, ought to be done. Witness ourself at Westminster, the —— day of ——, in the —— year of our reign.

[See 1 *Chit. Ar. Pr.* 381.]

3. *Note of Allowance.*

[*Same as the form, ante*, 111.]

4. *Note of Bail for the Master.*

[*Same as ante*, 111, except that instead of “error to the Exchequer Chamber,” “error to parliament,” must be inserted.]

5. *Notice of Bail.*

[*Same as ante*, 112.]

6. *Affidavit of Sufficiency.*

[*Same as ante*, 112.]

7. *One Day's Notice of Exception where Affidavits have been made pursuant to Rule Trin. Term, 1 Will. 4.*

[*Same as ante*, 112.]

8. *Notice requiring Justification at the Judge's Chambers.*

[*Same as ante*, 113.]

9. *The Form of Affidavit to procure leave to add another Bail.*

[*Same as after an arrest*, post, Book 1, Part 2, Chap. 1.]

10. *Rule for better Bail.*

[*Same as ante*, 113.]

11. *Notice of Justification.*

[*Same as ante*, 113.]

12. *Affidavit of Service of Notice of Justification.*

[*Same as after an arrest*, post, Book 1, Part 2, Chap. 1.]

13. *Rule of Allowance.*

[*Same as after an arrest*, post, Book 1, Part 2, Chap. 1.]

14. *The Return upon the Writ of Error in Q. B.*

[*Same as ante*, 114, except that "transcript of the" must be omitted; instead of "I certify to the justices," &c. "I humbly certify to our sovereign lady the queen in her parliament," must be inserted.]

[*See 1 Chit. Ar. Pr.* 382.]

15. *The like, in C. P. or Exchequer.*

[*Same as ante*, 114, omitting in each "transcript of the."]

16. *Entry of Non-pros, for not transcribing.*

[*Same as ante*, 114.]

17. *Petition that the Record be remitted, upon Plaintiff not assigning Errors, where Judgment affirmed by Exchequer Chamber(a).*

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble petition of *A. B.*, defendant, in a Writ of Error in Parliament, wherein *C. D.* is plaintiff.

Showeth,

That your petitioner in — term last obtained a judgment in the Court of Queen's Bench, [*or "C. P." or "Exch. of Pleas,"*] against the said *C. D.* in a certain action of [*debt.*]

That the said *C. D.* thereupon brought a writ of error in the Court of Exchequer Chamber, and the judgment aforesaid was in — term last affirmed by the judges of the Common Pleas and barons of the Exchequer, [*or "the Q. B." and "barons of the Exchequer," or "the Q. B." and "C. P."*] in the Exchequer Chamber aforesaid.

That the said *C. D.* hath thereupon brought a writ of error in the court of our lady the queen in her parliament, for the purpose (as your petitioner is advised and verily believes) of delaying your petitioner in obtaining execution upon his said judgment.

That the record and proceedings aforesaid have, on or about the — day of — instant, been removed into the court of our said lady the queen in her parliament aforesaid. And that although the same have been so removed as aforesaid, the said *C. D.* hath not as yet assigned his error.

Your petitioner, therefore, humbly prays your lordships to order that the record and proceedings aforesaid may be remitted to the said Court of Queen's Bench, [*or "C. P." or "Exch. of Pleas,"*] to the end that your petitioner may have execution thereupon.

And your petitioner will ever pray, &c.

A. B.

[*This may be easily adapted to the case of a writ of error after a reversal in the Exchequer Chamber.*]

[*See 1 Chit. Ar. Pr. 382.*]

18. *Order thereupon.*

Upon reading the petition of *A. B.*, showing that in — term last he obtained a judgment in a certain action in the Court of Queen's Bench, [*or "C. P." or "Exch. of Pleas,"*] against *C. D.*, and that the said *C. D.* thereupon afterwards brought a writ of error in the Court of Exchequer Chamber, where the said judgment was affirmed; and that the said *C. D.* hath for delay brought his writ of error thereupon in this house, and that the record and proceedings aforesaid have been removed hither, but that the said *C. D.* hath not as yet assigned errors therein; and praying that the record of proceedings aforesaid may be remitted to the said Court of Queen's Bench, [*or "C. P." or "Exch. of Pleas,"*] to the end that he may have execution thereupon, it is ordered by the lords spiritual and temporal in this present parliament assembled, that the said *C. D.* do and he is hereby required to assign error thereon on or before — next, at — of the clock in the forenoon, otherwise the said record and proceed-

(a) As there is no longer any occasion for a remittitur of the record, in order to have execution, it is question-

able whether the prayer of this petition is correct.

ings shall be and are hereby remitted, to the end that the said *A. B.* may have execution thereupon, as if no such writ of error had been brought in this house.

C. P. Clerk of Parliament.

[*This may be easily adapted to the case of a writ of error on a reversal in the Exchequer Chamber.*]

[*See 1 Chit. Ar. Pr. 382, 383.*]

19. *Judgment of Non-pros, for not assigning Errors.*

Afterwards, to wit, on —, the — day of —, in the — year of the reign of our sovereign lady Victoria, before our said lady the queen and the peers of this realm in this present parliament at Westminster, in the county of Middlesex, assembled, come as well the said *A. B.* as the said *C. D.* in their proper persons; and the said *A. B.* prays that the said *C. D.* may assign errors in the record and proceedings aforesaid; and thereupon a day is given to the said *C. D.* before our said lady the queen in her parliament aforesaid, to assign errors in the record and proceedings aforesaid, until —, the — day of — next; and the same day is given to the said *A. B.* aforesaid: At which day, before our said lady the queen in her parliament aforesaid, comes the said *A. B.* in his proper person; and the said *C. D.*, although solemnly called, doth not come, but makes default, nor doth he further prosecute the said writ of error against the said *A. B.* Therefore it is considered by the said court of our said lady the queen in her parliament, that the said *C. D.* take nothing by his said writ of error, but that he be in mercy &c., and that the said *A. B.* do go thereof without day &c. And it is further considered by the said court of our said lady the queen in her parliament, that the said *A. B.* do recover against the said *C. D.* £—, for his damages, costs, and charges, which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error, by the said court of our said lady the queen in her parliament here adjudged to the said *A. B.* and with his assent, according to the force of the statute in such case made and provided.

C. P. Clerk of Parliament.

[*See 1 Chit. Ar. Pr. 383.*]

20. *Entry thereof upon the original Judgment Roll.*

Afterwards, to wit, on (*the teste of the writ of error*) our said lady the queen sent to her right trusty and well-beloved the Right Honourable Thomas Lord Denman, her chief justice assigned to hold pleas in the court of our said lady the queen, before the queen herself, [*if in the C. P. or Exch. see ante, 115,*] her writ close in these words, to wit: Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, [*&c. here copy the writ of error, and proceed as follows:*] And thereupon the said chief justice, [*if in the Exch. "the lord chief baron of the said Exchequer,"*] without delay, the record and proceedings aforesaid, with all things touching the same, distinctly and openly did send to our said lady the queen in her said parliament, as by the said writ he was commanded.

Afterwards, to wit, on —, the — day of —, in the — year of the reign of our said lady the queen, before our said lady the queen and the peers of this realm in parliament at Westminster, in the county of Middlesex, assembled, came the said *A. B.* in his proper person, and prayed that the said *C. D.* might assign errors in the record and proceedings aforesaid; and thereupon a day was given to the said *C. D.* before

our said lady the queen in her parliament aforesaid, until —, the — day of —, to assign errors in the record and proceedings aforesaid; at which day, before our said lady the queen, in her parliament aforesaid, came the said *A. B.* in his proper person; and the said *C. D.*, although solemnly called, came not, but made default, nor did he further prosecute the said writ of error against the said *A. B.* Therefore it was considered by the said court of our said lady the queen in her parliament, that the said *C. D.* should take nothing by his said writ of error, but that he should be in mercy &c, and that the said *A. B.* should go thereof without day &c. And it was further considered by the said court of our said lady the queen, in her parliament, that the said *A. B.* should recover against the said *C. D.* £—— for his damages, costs, and charges, which he had sustained and expended by reason of the delay of execution of the judgment aforesaid, by the said court of our said lady the queen in her parliament there adjudged to the said *A. B.* and with her assent, according to the form of the statute in such case made and provided.

21. *Fi. fa. &c. thereon, in Q. B.*

[*Same as form, ante, 116, to the words, "also appears to us of record," inclusive, then thus:*] and also £——, which in our court of parliament were adjudged to the said *A. B.* according to the form of the statute in such case made and provided, for his damages, costs, and charges which he hath sustained and expended by reason of the delay of the execution of the judgment aforesaid, on pretence of prosecuting our other writ of error brought thereupon by the said *C. D.* against the said *A. B.*, the said judgment and the said affirmance thereof in our said Court of Exchequer Chamber being in all things in our said court of parliament also affirmed; because the said *C. D.* did not prosecute our said writ of error with effect, whereof the said *C. D.* is also convicted, as by the inspection of the record and proceedings thereof also appears to us of record; and have you the said monies before us immediately after the execution hereof [*or "on —,"*] to render unto the said *A. B.* for his damages [*or "debt and damages,"*] costs and charges aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf: and how you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof; and have you there this writ. Witness Thomas Lord Denman, at Westminster, the — day of —, in the — year of our reign.

[*Forms of a fi. fa. in the other courts, and also forms of a ca. sa. may be easily framed from the above and the forms of those writs, ante, 117, 118.*]

[*See 1 Chit. Ar. Pr. 385.*]

22. *Assignment of Common Errors where the Judgment was affirmed in the Exchequer Chamber.*

In the House of Lords.

C. D. } Afterwards, that is to say, on the — day of —, in the
 v. } — year of the reign of our sovereign lady Victoria, before our
A. B. } said lady the queen and the peers of this realm in this present
 parliament at Westminster, in the county of Middlesex, assembled, comes the said *C. D.* by *D. A.* his attorney, and says that in the record and proceedings aforesaid, and in giving and affirming the judgment aforesaid, there is manifest error in this, that the declaration aforesaid and the

matters therein contained are not sufficient in law for the said *A. B.* to have or maintain his aforesaid action thereof against him the said *C. D.*; and also there is error in this that the judgment aforesaid of the said court of our lady the queen before the queen herself, [*if from the C. P.* "before her justices of the Bench at Westminster," *if from the Exch.* "before the barons of her Exchequer,"] by the record aforesaid appears to have been given for the said *A. B.* against the said *C. D.*, whereas by the law of the land the said judgment ought to have been given for the said *C. D.* against the said *A. B.*; therefore in that there is manifest error: and also there is error in this, that the judgment aforesaid was affirmed in the Court of Exchequer Chamber of our said lady the queen, whereas by the law of the land the said judgment ought to have been reversed; therefore in that there is manifest error. And the said *C. D.* prays that the judgment and affirmance thereof aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment and the said affirmance thereof, &c.

[See 1 Chit. Ar. Pr. 382.]

23. *Common Joinder thereto.*

In the House of Lords.

A. B. } And hereupon the said *A. B.* by *P. A.* his attorney, comes and
v. } says, that there is no error either in the record and proceedings
C. D. } aforesaid, or in giving or affirming the judgment aforesaid, and he prays that the court of our lady the queen in her parliament here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, and the affirmance thereof aforesaid, may be in all things affirmed, &c.; but because the said court of our said lady the queen in her parliament here are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid here until ——— to hear their judgment thereon, for that the said court of our said lady the queen in her parliament here are not yet advised thereof, &c.

[See 1 Chit. Ar. Pr. 383.]

24. *Assignment of Common Errors, where the Judgment was reversed in the Exchequer Chamber.*

In the House of Lords.

A. B. } Afterwards, that is to say, on the ——— day of ———, in the
v. } ——— year of the reign of our sovereign lady Victoria, before our
C. D. } said lady the queen and the peers of this realm in this present parliament at Westminster, in the county of Middlesex, assembled, comes the said *A. B.* by his attorney, and says, that in reversing the judgment aforesaid there is manifest error in this, that the said judgment was reversed in the Court of Exchequer Chamber of our said lady the queen, whereas by the law of the land the said judgment ought to have been affirmed; therefore in that there is manifest error. And the said *A. B.* prays, that the said judgment of reversal, so given by the said Court of Exchequer Chamber as aforesaid, may be reversed, annulled, and altogether holden for nought, and that the judgment of the said court of our lady the queen before the queen herself aforesaid, [*if in C. P. or in Ex-*

chequer, as ante, 129,] may in all things be affirmed, and that he may be restored to all things which he hath lost by occasion of the said reversal, &c.

[See 1 Chit. Ar. Pr. 382.]

25. *Common Joinder thereto.*

In the House of Lords.

A. B. } And thereupon the said *C. D.*, by *D. A.* his attorney, comes
v. } and says, that there is no error in the reversal of the judgment
C. D. } aforesaid; and he prays that the court of our lady the queen in
her parliament here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment of reversal by the said Court of Exchequer Chamber in manner aforesaid given, may in all things be affirmed, and the judgment aforesaid by the said court of our lady the queen before the queen herself [if in *C. P.* or *Exchequer, as ante, 129,]* stand and remain reversed and annulled &c. But because [&c. conclude as in the joinder, ante, 131.]

[See 1 Chit. Ar. Pr. 383.]

26. *Petition for hearing Writ or Error, after Affirmance in the Exchequer Chamber.*

To the right honourable the lords spiritual and temporal, in parliament assembled.

The humble petition of *A. B.* defendant, in a writ of error in parliament, wherein *C. D.* is plaintiff,

Showeth,

That your petitioner obtained a judgment after verdict in the Court of Queen's Bench [or "*C. P.*" or "*Exch. of Pleas,*"] against the said *C. D.* in an action of debt for £——, which in —— term last, on a writ of error brought by the said *C. D.* in the Exchequer Chamber, was unanimously affirmed by all the judges of the Court of Common Pleas and barons of the Exchequer [if *C. P.* or *Exchequer mutatis mutandis, see ante, 110 :*] That the said *C. D.* hath lately brought a writ of error returnable in parliament, with an intent thereby, as your petitioner is advised and believes, to delay your petitioner, in a most unreasonable and unusual manner, from the recovery of his just debt.

That the record and proceedings in the said action have since been duly removed into the said court of our lady the queen in her parliament.

That the plaintiff in error hath assigned his errors, and your petitioner hath joined in error.

Your petitioner therefore most humbly prays your lordships to appoint such a day, for taking the premises into your consideration, and arguing the said errors, as to your lordships' great wisdom shall seem meet.

And your petitioner shall ever pray, &c.

[See 1 Chit. Ar. Pr. 384.]

27. *Order thereon.*

——, the —— day of ——, 18——.

Upon reading the petition of *A. B.* the defendant in a writ of error depending in this house, wherein *C. D.* is plaintiff, setting forth that the petitioner having obtained a judgment &c. [proceed as in the petition] and praying that a day may be appointed for taking the premises into consideration, and arguing the said errors, as to this house shall seem meet;

it is ordered by the lords spiritual and temporal in parliament assembled, that the plaintiff in error be served with a copy of the said petition, and this order; and that this house will hear counsel thereupon on —, the — day of — next, at — o'clock.

[*This and the preceding form may be easily adapted to the case of a writ of error after a reversal in the Exchequer Chamber.*]

[*See 1 Chit. Ar. Pr. 384.*]

28. Judgment of Affirmance for Plaintiff, in the House of Lords, after Judgment of Affirmance in Exchequer Chamber.

[*After the assignment of error and joinder and curia advisari vult, proceed.* At which day, before the same court of parliament at Westminster, come as well the said *C. D.* as the said *A. B.* in their proper persons; whereupon all and singular the premises being seen and by the court of parliament aforesaid now here fully understood, and as well the record and proceedings aforesaid,* and the judgment thereon given, as the said causes and matters by the said *C. D.* above for error assigned, being diligently examined and inspected, and mature deliberation being thereupon had, it seems to the court of parliament aforesaid now here,† that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid in the affirmance of the same judgment, and that the said record is in nowise vicious or defective. Therefore it is considered by the same court of parliament, that the judgment aforesaid, in form aforesaid given, and also the affirmance of the same judgment, be in all things affirmed and stand in their full force and effect, the said causes and matters by the said *C. D.* above for error assigned in anywise notwithstanding: And it is further considered, by the same court of parliament now here, that the said *A. B.* do recover against the said *C. D.* £——, by the same court of parliament adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided, for his damages, costs and charges which he hath sustained and expended, by reason of the delay of the execution of the judgment aforesaid, on pretence of prosecuting the said writ of error.

C. P. Clerk of Parliament.

[*See 1 Chit. Ar. Pr. 384.*]

29. Entry of Proceedings and Affirmance in the House of Lords.

Afterwards, to wit, on the — day of —, in the — year of the reign of our sovereign lady the now queen, the said lady the queen sent to her right trusty and well-beloved Thomas Lord Denman, the chief justice of the same lady the queen, assigned to hold pleas in the court of the said lady the queen, before the queen herself [*if in the C. P. or Exchequer, as ante, 129,*] her writ close in these words, to wit, Victoria, [*&c. here copy the writ of error, and proceed as follows:*] By virtue of which said writ, the said chief justice [*if in the Exchequer, "the lord chief baron of the said Exchequer,"*] with his own proper hands brought the record and proceedings in the plaint aforesaid, with all things concerning the same, to our said lady the queen in this present parliament, in a certain record to the said writ annexed, according to the exigency of that writ.

Afterwards, to wit, on the — day of —, in the — year of the reign of our said lady the queen, before our said lady the queen and the peers of this realm, in this present parliament at Westminster, in the county of Middlesex, assembled, comes the said *C. D.* in his proper

person, and immediately says, that in the record and proceedings aforesaid, and in giving and affirming the judgment aforesaid, there is manifest error, [*&c. here copy the assignment of errors and joinder:*] But because the court of our said lady the queen before the queen herself in her parliament, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before our said lady the queen in her parliament, until —, the — day of — next ensuing, wheresoever &c., to hear their judgment of and upon the premises, because the court of our said lady the queen in her parliament are not yet advised thereof &c. At which day, before the same court of parliament at Westminster aforesaid, come as well the said C. D. as the said A. B.: whereupon all and singular the premises being seen &c. [*conclude as in the last.*]

[*See 1 Chit. Ar. Pr. 384.*]

30. *Judgment of Affirmance for Defendant, after Judgment of Affirmance in Exchequer Chamber.*

[*Same as ante, 133, No. 28, reversing the names of the plaintiff and defendant.*]

31. *Entry thereof on the original Judgment Roll.*

[*Same as ante, 133, No. 29, mutatis mutandis.*]

32. *Judgment of Affirmance for Defendant after Judgment of Reversal for him in Exchequer Chamber.*

[*Proceed as in the form, ante, 133, No. 28, to the*, reversing the names of the plaintiff and defendant, then proceed thus:*] and the judgment thereon by the said Court of Exchequer Chamber given in form aforesaid, as the said causes and matters by the said A. B. above for error assigned, being diligently examined and inspected, and mature deliberation being thereupon had, it seems to the court of parliament now here,† that there is no error in giving the said judgment by the said Court of Exchequer Chamber as aforesaid. Therefore it is considered by the same court of parliament, that the judgment aforesaid by the said Court of Exchequer Chamber as aforesaid given, be in all things affirmed and placed in full force and effect, the said causes and matters by the said A. B. above for error assigned in anywise notwithstanding: And it is further considered [*conclude as ante, 133, No. 28, reversing the names of the plaintiff and defendant.*]

33. *Entry thereof on the Roll.*

[*Same as ante, 190, No. 29, mutatis mutandis.*]

34. *Execution on such Judgments.*

[*The writs of execution may be readily framed from the forms, ante, 130, 116, 117, 118, mutatis mutandis.*]

35. *Judgment of Reversal where Judgment in Q. B. for Plaintiff was reversed in Exchequer Chamber.*

[*Proceed as in the form, supra, No. 32, to the dagger†, and then thus:*]

that there is manifest error in giving the said judgment in form aforesaid, by the Court of Exchequer Chamber aforesaid. Therefore it is considered by the said court of our lady the queen in her parliament here, that the judgment aforesaid by the said Court of Exchequer Chamber in form aforesaid given, for the errors aforesaid, and for other errors therein being, be reversed, annulled, and altogether holden for nought, and that the said *A. B.* be restored to all things which he hath lost by occasion of the said judgment, &c.

36. *The like, where Judgment for Defendant was affirmed in Exchequer Chamber.*

[*Proceed as in the form, supra*, No. 32, to the dagger †, and then thus:] that there is manifest error in the record and proceedings aforesaid, and in giving and affirming the judgment aforesaid. Therefore it is considered by the said court of our lady the queen in her parliament here, that the judgment aforesaid, by the said Court of Exchequer Chamber in form aforesaid given, and also the judgment aforesaid of the said court of our lady the queen before the queen herself, (*if in the C. P. or Exchequer, see ante*, 125, No. 19,) for the errors aforesaid, and for other errors therein being, be reversed, annulled, and altogether holden for nought, and that the said *A. B.* be restored to all things which he hath lost by occasion of the said several judgments*, and also that he ought to recover against the said *C. D.* [*&c. as in the judgments of reversal, ante*, 122, *mutatis mutandis.*]

37. *The like, where Judgment for Plaintiff was affirmed in Exchequer Chamber.*

[*Proceed as in the last form to the asterisk**, and then thus:] And thereupon the record and proceedings aforesaid are remitted from the said court of our lady the queen in her parliament here, to the said court of our lady the queen before the queen herself, (*if in C. P. or Exchequer, see ante*, 125, No. 19,) in order that the said *C. D.* may have restitution thereupon, &c.]

38. *Entry thereof upon the original Judgment Roll.*

[*Same as the forms, ante*, 129, 133, respectively, *mutatis mutandis.*]

39. *Execution &c. thereupon.*

[*The writs of execution and of inquiry, where requisite, may be easily framed from the forms, ante*, 116, 122.]

40. *Scire Facias quare Restitutionem non. Writ of Restitution.*

[*These may easily be framed from the forms, ante*, 124, 125.]

III. WRIT OF ERROR FROM INFERIOR COURTS OF RECORD TO THE COURT OF QUEEN'S BENCH.

1. *Præcipe for Writ.*

—— to wit. Writ of error for *C. D.* late of ——, gentleman, at the suit of *A. B.* on a judgment in an action on the case (*as the action may be,*) [in the Palace Court] returnable on ——, wheresoever, &c.

D. A. attorney, ——, 1839.

[See 1 *Chit. Ar. Pr.* 385.]

2. *Writ of Error from the Palace Court.*

Victoria [&c. *as ante*, 110,] to the judges of our court of our palace at Westminster, and to each of them, greeting: Because in the record and proceedings, and also in the giving of judgment in a plaint which was before you, in the court of our palace aforesaid, without our writ, between *A. B.* and *C. D.*, in an action on the case, (*or as the action is,*) as it is said, manifest error hath intervened, to the great damage of the said *C. D.*, as by his complaint we are informed: We, being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send to us, distinctly and openly, under your seal, or the seal of one of you, the record and proceedings of the plaint aforesaid, with all things touching the same, and this writ, so that we may have them on ——, wheresoever we shall then be in England, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right, and according to the law and custom of England, ought to be done. Witness ourself at Westminster, the —— day of ——, in the —— year of our reign.

[See 1 *Chit. Ar. Pr.* 385.]

3. *The like, from the County Palatine of Lancaster.*

Victoria [&c. *as ante*, 110,] To our chancellor of our county palatine of Lancaster, or to his deputy there, greeting: Forasmuch as in the record and process, and also in the giving of judgment in a plaint which was in our court before our justices at Lancaster, by our writ, between *A. B.* and *C. D.* in an action on the case, (*or as the action is,*) as it is said, manifest error hath intervened, to the great damage of the said *C. D.* as by his complaint we are informed: We, being willing [&c. *as in the last*] do command you, that by our writ, under the seal of the said county, you cause to be given in charge to our justices at Lancaster, that if judgment be thereupon given, then they send to you under their seals, into the Chancery of the said county, the record and process aforesaid, with all things touching the same, which are in their custody, as it is said, on —— next ensuing, and our writ, which came to them thereupon: And do you send to us, distinctly and openly, under the seal of the said county, the record and process aforesaid, and this writ, so that we may have them on ——, wheresoever we shall then be in England, that the record and process aforesaid being inspected, we may cause further to be done thereupon [&c. *conclude as in the last.*]

[See 1 *Chit. Ar. Pr.* 385.]

4. *Entry of Judgment of Non-pros for not assigning Errors.*

As yet of — term, in the — year of the reign of Victoria. Witness, Thomas Lord Denman, (*name of chief justice*).

England to wit. Our lady the queen hath sent to her judges of her court [at her palace at Westminster,] her writ close in these words, to wit: Victoria [*&c. here copy the writ of error and return, with the proceedings in the original action, and proceed as follows:*]

Afterwards, to wit, on — —, comes here the said *A. B.* by *P. A.* his attorney, and prays that the said *C. D.* may assign errors of record, in the record and proceedings aforesaid; whereupon a day is given by the court here until — —, that is to say, for the said *C. D.* to assign errors in the record and proceedings aforesaid: At which day comes here the said *A. B.* by his attorney aforesaid; and the said *C. D.*, although solemnly called, doth not come, nor hath he assigned any error of record in the record and proceedings aforesaid, nor doth he further prosecute his said writ of error, but makes default: Therefore on the — day of —, A. D. —, it is considered, that the said *C. D.* take nothing by his writ aforesaid, and that the said *A. B.* do go thereof without day &c.; and that the said *A. B.* have his execution against the said *C. D.* of his damages [*or if in debt, "debt and damages"*] aforesaid, according to the force, form, and effect of the said recovery &c. It is also considered, that the said *A. B.* do recover against the said *C. D.* £—— by the court here adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided, for his damages, costs, and charges which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting his said writ of error; and that the said *A. B.* have execution thereof &c.; and the said *C. D.* in mercy &c.

[*See 1 Chit. Ar. Pr. 387, 388.*]

5. *Fieri facias thereon.*

Victoria [*as ante*, 110,] to the sheriff of — greeting: We command you, that of the goods and chattels of *C. D.* late of —, in your bailiwick, you cause to be made £—— [*or "a certain debt of £——,"*] which *A. B.* lately in our court of [our palace at Westminster,] held at [Southwark, in the county of Surrey,] within the jurisdiction of the said court, before [*J. L.* the steward of the said court,] recovered against the said *C. D.* [*&c. as post*, 149,] whereof the said *C. D.* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into court before us at Westminster, for certain supposed causes of error therein, and which are now there remaining, appears to us of record; and also £—— which in our said court before us at Westminster aforesaid, were adjudged to the said *A. B.*, according to the form of the statute in such case made and provided, for his damages, costs, and charges which he had sustained and expended on occasion of the delay of execution of the judgment aforesaid, on pretence of prosecuting our writ of error, brought thereupon by the said *C. D.* against the said *A. B.*, because the said *C. D.* did not prosecute the said writ of error with effect; whereof the said *C. D.* is also convicted, as appears to us of record; and have the said monies before us immediately after the execution hereof [*or "on —"*] wheresoever we shall then be in England, to be rendered to the said *A. B.* for his damages, costs, and charges aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf, and in what

manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof; and have there then this writ. Witness, Thomas Lord Denman (*name of chief justice*), at Westminster, the — day of —, in the — year of our reign.

6. *The like, for the Damages and Costs in Error only.*

Victoria [&c. *as ante*, 110, No. 2,] to the sheriff of — greeting: We command you, that of the goods and chattels of C. D. late of — in your bailiwick, you cause to be made £ —, which lately in our court before us were adjudged to A. B., according to the form of the statute in such case made and provided, for his damages, costs and charges which he had sustained and expended on occasion of the delay of the execution of a certain judgment obtained by the said A. B. against the said C. D. in our court of [our palace at Westminster,] held at [Southwark, in the county of Surrey,] within the jurisdiction of the said court, before [J. L. steward of the said court], on pretence of prosecuting our writ of error, brought by the said C. D. against the said A. B. of and upon the said judgment, because the said C. D. did not prosecute the said writ of error with effect; whereof the said C. D. is convicted, as by the record and proceedings thereof, which for certain supposed causes of error therein we lately caused to be brought into our said court before us, and which are now there remaining, appears to us of record; and have the said money [&c. *conclude as in the last.*]

7. *Ca. sa. thereon.*

[*A ca. sa. may be easily framed from the above and the forms already given, ante, 118.*]

[*See 1 Chit. Ar. Pr. 385.*]

8. *Assignment of Common Errors.*

In the Queen's Bench.

C. D. } Afterwards, to wit, on —, before our lady the queen at
v. } Westminster, comes the said C. D. by D. A. his attorney, and
A. B. } says, [*conclude as ante*, 118, No. 28.]
In error. } [*See 1 Chit. Ar. Pr. 387.*]

9. *Assignment of the want of original Writ, on Error from the Common Pleas at Lancaster (a).*

In the Queen's Bench.

C. D. } Afterwards, to wit, on —, the — day of —, in —
v. } term, before our lady the queen at Westminster, comes the
A. B. } said C. D. by D. A. his attorney, and says, that in the re-
In error. } cord and proceedings aforesaid, and also in giving judgment
aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the said C. D. was attached to answer to the said A. B. in the plea aforesaid, yet no original writ between the parties aforesaid, in the plea aforesaid, is filed or remaining of record in the said court of our said lady the queen before her justices at Lancaster aforesaid; therefore in that there is manifest error: There is also error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said A. B. to have or maintain his aforesaid action thereof

(a) This cannot now be assigned for error in any *personal* action.

against the said *C. D.*; therefore in that there is manifest error: There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said *A. B.* against the said *C. D.*, whereas by the law of the land the said judgment ought to have been given for the said *C. D.* against the said *A. B.* And the said *C. D.* prays the writ of our said lady the queen, to be directed to the *custos brevium* and justices of the said court of our said lady the queen, before her justices at Lancaster aforesaid respectively, to certify to our said lady the queen the truth of the premises; and it is granted to him, &c. And the said *C. D.* prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by the occasion of the said judgment, &c.

[*Counsel's signature.*]

[*See 1 Chit. Ar. Pr. 387.*]

10. *Common Joinder in Error.*

In the Queen's Bench.

A. B.) And hereupon afterwards, that is to say, on —, the said
ats.) *A. B.* by *P. A.* his attorney, comes into court, and says that there
C. D.) is no error either in the record and proceedings aforesaid, or in
giving the judgment aforesaid, and he prays that the court of our lady the queen now here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c. But because the said court of our said lady the queen now here are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid until — before our said lady the queen, wheresoever she shall then be in England, to hear their judgment thereupon, for that the said court of our said lady the queen here are not yet advised thereof, &c.

[*See 1 Chit. Ar. Pr. 387.*]

11. *Entry of Proceedings upon the Roll.*

[*The same as ante, 137, No. 4, to the end of the transcript. Then enter the assignment of errors and joinder with the curia advisari vult, as in the last form.*]

[*See 1 Chit. Ar. Pr. 388.*]

12. *Copies of the proceedings for the judges.*

[*These are copies of the entry upon the record.*]

[*See 1 Chit. Ar. Pr. 388, 374.*]

13. *Judgment of Affirmance for Plaintiff.*

At which day, before our said lady the queen at Westminster, come the parties aforesaid, by their attornies aforesaid; whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid by the said *C. D.* above for error assigned, being seen, and by the court of our said lady the queen now here fully understood, and mature deliberation being thereupon had, it appears to the court of our said lady the queen now here, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment

aforesaid: Therefore it is considered, that the judgment aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force and effect, the several matters above for error assigned in anywise notwithstanding: And it is further considered, that the said *A. B.* do recover against the said *C. D.* as well his damages [or "debt and damages"] aforesaid, as also £—— adjudged to him by the court of our said lady the queen now here, according to the form of the statute in such case made and provided, for his damages, costs, and charges which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of the said writ of error, which said damages, costs, and charges in the whole amount to £——, and that the said *A. B.* have execution thereof, &c.; and the said *C. D.* in mercy, &c.

[See 1 Chit. Ar. Pr. 389.]

14. *Entry thereof upon the Roll.*

[After the entry of the proceedings, as ante, 137, No. 4, to the end of the transcript, and also the entry of the assignment of errors and joinder, with the curia advisari vult, enter the judgment supra.]

15. *Execution thereupon,*

[The same as on the judgment of non-pros, ante, 137, No. 5, and 138, No. 6, substituting the words "the said judgment being in our said court before us in all things affirmed," instead of "because the said *C. D.* did not prosecute the said writ of error with effect."]

[See 1 Chit. Ar. Pr. 389.]

16. *Judgment of Reversal for Defendant.*

At which day, before our said lady the queen at Westminster, come the parties aforesaid, by their respective attornies aforesaid; whereupon as well the record and proceedings aforesaid, and the judgment aforesaid, in form aforesaid given, as the matters aforesaid by the said *C. D.* above for error assigned, being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court of our said lady the queen now here, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error: Therefore it is considered, that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, be reversed, annulled, and altogether held for nothing*; and that the said *C. D.* be restored to all things which he hath lost by occasion of the said judgment, &c.

17. *Entry thereof upon the Roll.*

[After the entry of the proceedings as directed, supra, No. 14, enter the judgment supra.]

18. *Judgment of Reversal for Plaintiff in Debt.*

[Proceed as in the form supra, No. 16, to the asterisk*, and then thus:] And that the said *A. B.* do recover against the said *C. D.* his debt aforesaid, and also £—— for his damages which he hath sustained, as well by reason of the detaining of the said debt, as for his costs and

charges by him about his suit in this behalf expended, by the court of our said lady the queen now here adjudged to the said *A. B.* and with his assent; and that he have execution thereof &c.; and the said *C. D.* in mercy, &c.

19. *Entry thereof upon the Roll.*

[*After the entry of the proceedings, as directed, ante, 140, No. 14, enter the judgment ante, 140, No. 18.*]

20. *Execution thereon.*

[*See the forms, ante, supra, 122, 140.*]

21. *Judgment of Reversal for Plaintiff in Action for Damages.*

[*Proceed as in the form supra, No. 16, to the asterisk*, and then thus:*] And that the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises: But because it is unknown to the court of our said lady the queen now here what damages the said *A. B.* hath sustained by means of the premises, the sheriff is commanded [*&c. conclude as ante, 123, No. 40.*]

22. *Entry thereof on the Roll.*

[*After the entry of the proceedings, as directed, ante, No. 14, enter the judgment supra, No. 21.*]

23. *Writ of Inquiry thereon.*

[*See the form, ante, 123, No. 42, which may be made applicable, mutatis mutandis.*]

24. *Execution thereon.*

[*See the forms, ante, 122.*]

25. *Restitution thereon.*

[*See the forms, ante, 125, No. 46, which may be made applicable, mutatis mutandis.*]

IV. WRIT OF ERROR TO HOUSE OF LORDS AFTER JUDGMENT OF INFERIOR COURT AFFIRMED OR REVERSED IN QUEEN'S BENCH.

[*The forms will be nearly the same as those ante, 126 to 135, mutatis mutandis.*]

V. WRIT OF ERROR CORAM NOBIS OR CORAM VOBIS.

1. *Præcipe for Writ of Error, Coram Nobis or Vobis.*

—— (to wit.) Writ of error, coram nobis (or “vobis,”) for C. D. at the suit of A. B. [or if by plaintiff, “for A. B. against C. D.”] on a judgment in case [or as the form of action is], in the Queen’s Bench, [or “C. P.” or “Exchequer of Pleas,”] returnable on ——.

D. A. attorney, —— 1839.

2. *The Writ.*

Victoria [&c. as ante, 110,] to our justices assigned to hold pleas in our court before us [if in the Common Pleas or Exchequer, see ante, 110,] greeting: Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our court before us [if in the Common Pleas, “before you and your associates, our justices of the Bench aforesaid,” if in the Exchequer, “before you”] between A. B. and C. D. in an action on the case [or as the form of action is], as it is said, which said record and proceedings now remain before us [if in the C. P. or Exchequer, as supra], as it is said manifest error hath intervened, to the great damage of the said C. D. [or if the writ of error be brought by baron and feme, on a judgment against the feme, “to the great damage of E. D. and the said C. his wife,”] as by his [or “their”] complaint we are informed: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then the record and proceedings aforesaid being inspected, you cause to be further done thereupon, for correcting that error, what of right, and according to the law and custom of England, ought to be done. Witness ourself at Westminster, the —— day of ——, in the —— year of our reign.

[See 1 Chit. Ar. Pr. 389.]

3. *The like, in Q. B. on Abatement of former Writ, on Judgment of Inferior Court.*

Victoria, [&c. as ante, 110,] to our justices assigned to hold pleas in our court before us, greeting: Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our court of our palace, &c. [see ante, 110] between A. B. and C. D. late of ——, of a plea of trespass on the case [or, as the plea is,] as it is said, which said record and proceedings, by reason of error happening therein, we have caused to be brought, and the same now remain before us, as it is said manifest error hath intervened, to the great damage of E. F. administrator of all and singular the goods, chattels and credits which were of the said A. B. who is dead intestate, as it is said, as by the complaint of the said E. F. we are informed: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you [&c. conclude as in the last.]

[See 1 Chit. Ar. Pr. 389.]

4. *Writ of Error, Coram Nobis, for reversing Outlawry in Q. B.*

Victoria [*&c. as ante*, 110, No. 2,] to our justices assigned to hold pleas before us, greeting: Forasmuch as in the record and process, and also in the publication of an outlawry, published against *C. D.* late of —, in an action on promises [*&c. as ante*, 110, No. 2,] whereupon he is outlawed in London, [*or* “in the county of —,”] at the suit of *A. B.* returnable before us, as it is said manifest error hath intervened, to the great damage of the said *C. D.* as by his complaint we are informed: We being willing that the said error, if any there be, should be duly amended, and full and speedy justice done to the said *C. D.* in this behalf, do command you, that if the said outlawry be returned before us, as hath been said, then, inspecting the said record and process, you may cause further to be done thereupon what of right, and according to the law and custom of England, ought to be done. Witness ourself at Westminster, the — day of —, in the — year of our reign.

By Sir —, knight, attorney-general }
of our lady the queen. }

5. *The like, Coram Vobis, for reversing Outlawry, in C. P.*

Victoria, [*&c. as ante*, 110, to our right trusty and well-beloved Sir Nicholas Conyngham Tindal, knight, our chief justice of the Bench, greeting; Forasmuch as in the record and process, and also in the publication of an outlawry, published against *C. D.* late of —, in an action on promises, [*&c. as ante*, 142, No. 2,] whereupon he is outlawed in London, [*or* “in the county of —,”] at the suit of *A. B.*, returnable before you and your associates, our justices of the Bench aforesaid, as it is said manifest error hath intervened, to the great damage of the said *C. D.*, as by his complaint we are informed: We being willing [*&c. proceed as in the last*,] do command you, that if the said outlawry be returned before you and your associates, our said justices of the Bench aforesaid, as hath been said, then inspecting the said record and process [*&c. conclude as in the last*.]

6. *Affidavit of Coverture, to obtain Allowance of Writ of Error, Coram Nobis or Vobis.*

In the Q. B. [*or* “C. P.” *or* “Exch. of Pleas.”]

A. B. plaintiff, *C. D.* defendant.

W. W. of — maketh oath and saith, that he well knows *E. D.* the defendant in this cause, and her husband *C. D.* of —: And this deponent further saith, that the said *E. D.* was at the time of the commencement of this suit married to and the wife of the said *C. D.*; and this deponent verily believes that the said *C. D.* is now living, he this deponent having seen and conversed with him on the — day of this instant —

W. W.

Sworn [*&c. (a).*]

[*See 1 Chit. Ar. Pr.* 390.]

7. *Rule of Allowance of Writ of Error, Coram Nobis.*

B. } It is ordered, that the writ of error issued between the parties in
v. } this cause be allowed: and upon the plaintiff in error putting in and
D. } justifying his bail within four days next ensuing, that further pro-

(a) See Index, title “*Jurat.*”

ceedings be stayed on the judgment in the original action, until the said writ of error now depending between the parties be determined.

By the Court.

[See 1 Chit. Ar. Pr. 389.]

8. *The like of Writ of Error, Coram Vobis, for reversing an Outlawry.*

B. } Upon reading the writ of error upon the outlawry in this cause,
v. } it is ordered, that the said writ of error be allowed; and that upon
D. } the plaintiff in error putting in and perfecting bail upon the said writ of error, in such manner as the court here shall direct and appoint, within four days, all further proceedings upon the said outlawry do cease, until the said writ of error be determined. On the motion of Mr —.

By the Court.

9. *Affidavit of Cause of going beyond Sea, to govern Form of Recognizance of Bail in Error, on Outlawry, in Q. B. or C. P.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

C. D. plaintiff, }
v. } In error.
A. B. defendant, }

C. D. of —, the above-named plaintiff, maketh oath and saith, that he hath sued out and obtained this writ of error, for the purpose of setting aside the judgment of outlawry which has been obtained against him by the above-named defendant; And this deponent further saith, that he was abroad, in foreign parts and beyond the seas, to wit, at —, in the kingdom of —, before and at the time when the writ of exigent was awarded and issued against him in this cause; and that he this deponent remained abroad, in the said parts beyond the seas, from thence until at and after the time of awarding and issuing the said writ, and pronouncing the judgment of outlawry thereon: And this deponent further saith, that he went abroad to the said parts beyond the seas, for the purpose of settling his affairs, [or "of transacting his business as a merchant," or otherwise according to the fact;] and that he did not go abroad to the said parts beyond the seas, or remain there as aforesaid, for the purpose of avoiding or eluding the process of this honourable court, or of defeating the said court or the proceedings therein; nor was he this deponent at all aware of any process being sued out against him, at the suit of the said defendant, until after the said judgment of outlawry was so pronounced as aforesaid.

C. D.

Sworn [&c. (a)].

[See Chit. Ar. Pr. 390. See a form, Tidd's Forms, 505.]

10. *The Bail.*

[As to the putting in bail, see 1 Chit. Ar. Pr. 390. The forms may be easily framed from those, ante, 111, &c. and from those in bail to the action, post.]

11. *Entry of Non-pros for not assigning Errors.*

Afterwards, to wit, on —, in the — year of the reign of our said lady the queen, come here C. D. and the said E. D. his wife, by D. A. their attorney, and bring into court here a certain writ of our said lady the queen for correcting error of and upon the premises aforesaid, and they

(a) See Index, title "Jurat."

pray that the said writ may be allowed, and it is allowed by the said court here, &c. ; and which said writ follows in these words, to wit: Victoria, by the grace of God [*&c. here copy the writ to the end.*] And thereupon, on —, comes here the said *A. B.* by *P. A.* his attorney, and prays that the said *C. D.* may assign errors in the record and proceedings aforesaid ; and thereupon a day is given to the said *C. D.* here, until — in this term, to assign errors in the record and proceedings aforesaid ; at which day comes here the said *A. B.* by his attorney aforesaid ; and the said *C. D.* although solemnly called, comes not, but makes default, nor doth he assign errors in the record and proceedings aforesaid, nor doth he further prosecute his said writ of error against the said *A. B.* Therefore it is considered that [*conclude as in the form, ante, 115, altering it if the judgment be in C. P. or Exch.*]

12. Execution thereon.

[*See the forms, ante, 116, 117, 118, which may be easily made applicable, mutatis mutandis.*]

13. Assignment of Errors and subsequent Proceedings where Errors are matters of Law, as to reverse an Outlawry, for insufficiency of the Exigi facias, &c.

In the Q. B. [*or "C. P."*]

C. D. } Afterwards, to wit, on —, comes here the said *C. D.* by
v. } *D. A.* his attorney, and immediately says, that in pronouncing
A. B. } of the outlawry aforesaid, there is manifest error in this*, to wit,
 that the said writ of *exigi facias* is insufficient, invalid, and void in law :
 therefore in that there is manifest error ; there is also error in this, to wit,
 [*&c. assigning the errors :*] and the said *C. D.* prays the writ of our lady
 the queen to warn the said *A. B.* to be before the said lady the queen, [*if*
in C. P. "before the justices here," if in Exch. "before the barons
here,"] to hear the record and proceedings aforesaid ; and it is granted to
 him &c.

[*See 1 Chit. Ar. Pr. 390.*]

14. Rule to plead thereto.

[*This is obtained from the master in Q. B., from the prothonotary in the C. P., and from the master in the Exchequer.*]

[*See 1 Chit. Ar. Pr. 391.*]

15. Joinder in Error.

[*See the form, ante, 119, No. 29, which may be easily made applicable, mutatis mutandis.*]

[*See 1 Chit. Ar. Pr. 391.*]

16. Entry of the Proceedings thereon upon the Roll.

[*The same as ante, 144, No. 11, to the end of the writ, and then add the assignment of errors, joinder, and the cur. adv. vult.*]

[*See 1 Chit. Ar. Pr. 391.*]

17. *Copies of Proceedings for the Judges.*[*These are copies of the entry of the proceedings on the roll.*][*See 1 Chit. Ar. Pr. 391.*]18. *Memorandum for Rule for Judgment thereon.*

In the Q. B.

D. } Rule for judgment on writ of error, coram nobis.

v. } Dated ———, 1839.

B. }

P. A. plaintiff's attorney.

[*See 1 Chit. Ar. Pr. 391, 392.*]19. *Judgment thereon.*[*See the forms, ante, 120, 121, 122, which may be readily made applicable.*]20. *Execution thereon.*[*See the forms, ante, 122, 124, which may be readily made applicable.*]21. *Restitution thereon.*[*See the form, ante, 125, No. 46, which may be readily made applicable.*]22. *Assignment of Errors and subsequent Proceedings where the Errors are matters of fact, as of coverture of Defendant at the time of bringing Action.*In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

C. D. } Afterwards, to wit, on ———, comes here C. D. and E. his
 and wife } wife, which said E. was and is impleaded in this suit by the
 v. } name of E. F., in their proper persons, and say that in the
 A. B. } record and proceedings aforesaid, and also in giving the judg-
 In error. } ment aforesaid, there is manifest error in this, to wit, that be-
 fore the day of the commencement of the said suit of the said A. B.
 against the said E. by the name of E. F., and before the giving of the
 judgment aforesaid, to wit, on ———, at ——— aforesaid, the said E. inter-
 married with and took to husband the said C. D., and that she the said
 E., at the time of the commencement of the said suit, and also at the time
 of giving the judgment aforesaid, was and yet is covert of the said C. D.
 then and yet her husband, to wit, at ——— aforesaid; therefore in that
 there is manifest error; and this they the said C. D. and E. his wife are
 ready to verify; wherefore they pray that the judgment aforesaid, for the
 error aforesaid, may be revoked, annulled, and altogether held for nothing,
 and that they may be restored to all things which they have lost by occa-
 sion of the judgment aforesaid, &c.

[*See 1 Chit. Ar. Pr. 392.*]23. *Assignment of Error to reverse Outlawry, that the Defendant was beyond sea at the time of the exigent awarded.*[*The same as ante, 145, No. 13, to the*, then thus:*] that the said C. D. before and at the time of awarding and issuing the writ of *exigi facias*,

upon which the said judgment of outlawry was pronounced, and from thence continually afterwards until the time of pronouncing the said judgment of outlawry, and afterwards, was in parts beyond the seas, to wit, at the city of Madrid, in the kingdom of Spain; and this the said C. D. is ready to verify: wherefore he prays judgment, and that the said judgment of outlawry so against him the said C. D. in form aforesaid pronounced, may be reversed, annulled, and altogether holden for nought, and that he the said C. D. may be restored to all things which he hath lost by occasion of the judgment aforesaid, &c.

24. *Rule to plead thereto, see ante, 145, No. 14.*

25. *Plea to the first Assignment.*

In the Q. B. [or "C. P."]

On the — day of —, A. D. —.

A. B. } And hereupon the said A. B. by P. A. his attorney, freely,
 ats. } here in court comes and says, that by reason of any thing
 C. D. } above for error assigned, the judgment aforesaid ought not to
 and wife. } be revoked, annulled, or held for nothing: because he says
 In error. } that the said E., at the time of the commencement of the suit
 aforesaid, was not nor is covert of the said C. D. in manner and form as
 the said C. D. and E. have above alleged; and of this he the said A. B.
 puts himself upon the country, &c.

[See 1 Chit. Ar. Pr. 393.]

26. *Pleas to the last Assignment.*

In the Q. B. [or "C. P."]

On the — day of —, A. D. —.

A. B. } And hereupon comes the said A. B. by P. A. his attorney,
 ats. } and says that the judgment of outlawry aforesaid, by reason
 C. D. } of any thing above for error assigned, ought not to be revoked,
 In error. } annulled, or holden for nought; because he says that the said
 C. D. before and at the time of awarding and issuing the writ of exigi
 facias aforesaid, or from thence until the time of pronouncing the judg-
 ment of outlawry aforesaid, was not in parts beyond seas, in manner and
 form as the said C. D. hath above in that behalf alleged; and of this he
 the said A. B. puts himself upon the country, &c.

27. *Entry of the Proceedings thereon upon the Roll.*

[Proceed as in the entry, ante, 145, to the end of the writ, then add the assignment of errors, the plea thereto, the similiter, and the award of the venire, as ante, 44. It is questionable whether this entry is necessary.]

28. *The Issue thereon.*

[The issue is a copy of the judgment roll and subsequent entries, including the award of the venire. See 1 Chit. Ar. Pr. 393.]

29. *Notice of Trial thereon.*

[The notice of trial is the same as in ordinary cases; see ante, 50.]

30. *The Nisi Prius Record thereon.*

[This will be nearly in the usual form as those ante, 66, &c. entering the writ of error, assignment, &c. to the award of venire, inclusive, as in the issue; and, lastly, the jurata. But in the jurata substituting the words "of a plea of error in fact," for "in an action of trespass," &c.]
[See 1 Chit. Ar. Pr. 394.]

31. *Jury Process thereon.*

[The jury process will be the same as in ordinary cases; see ante, 68, &c. *mutatis mutandis*, and vide the preceding observation.]

32. *The Postea thereon.*

[This will be the same as in ordinary cases, see ante, 92, &c. with the finding of the affirmative or negative of the matter put in issue.]

33. *The Judgment thereon.*

[The form of the judgment will be the same as those ante, 152, &c.]

34. *Execution, Restitution, &c. thereon.*

[For the forms of writs of execution, see ante, 122, 124, and for those writs of restitution, &c. see ante, 125, &c.]

SECTION IV.

EXECUTION.

1. *Fieri Facias*, 148 to 180.
2. *Flegit*, 180 to 190.
3. *Levari Facias*, 190.
4. *Capias ad Satisfaciendum*, 190 to 200.
5. *Execution, for Defendant*, 201 to 203.

I. *FIERI FACIAS.*1. *Fi. fa. for Plaintiff in Assumpsit, in Q. B. or C. P. (a).*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting (b): We command you that of the goods and chattels of C. D. in your bailiwick (c) you cause to be made £—, which A. B. lately in our

(a) See 5 Bing. N. C. 366.

(b) See as to the different directions of writs, ante, 20, n. (a).

(c) Supposing the property to be in a district or place, parcel of one county, but wholly situate within and

court before us [*or in C. P. "before our justices of the bench"*] at Westminster, recovered against him for his damages which he had sustained as well on occasion of the not performing certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.*, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, [*or in C. P. omit the words, "as appears to us of record,"*] together with interest upon the said sum of £——, at the rate of four pounds per centum per annum from the —— day of —— (*a*), in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have that money, with such interest as aforesaid, before us [*or in C. P. "before our said justices"*] at Westminster, immediately after the execution thereof, to be rendered to the said *A. B.* for his damages and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices"*] at Westminster immediately after the execution thereof, and have there then this writ. Witness —— (*name of chief justice*), at Westminster, on the —— day of ——, in the year of our Lord 1840.

Indorse it thus: "Levy the whole [*or 'levy £——'*] and interest at £4 per cent. from ——, 1840, besides sheriff's poundage, officers' fees, and all other incidental expenses." *And when the writ is issued out of the Queen's Bench, also indorse on it:* "The defendant is a [tailor] and resides at [No. —, —— street.] *P. A.* [Temple], plaintiff's attorney. [—— 1840.]

[*See 1 Chit. Ar. Pr. 419.*]

2. *The like, in Exchequer.*

Victoria [*&c. as ante, 148,*] to the sheriff of ——, greeting: We command you, that you omit not by reason of any liberty of your county, but that you enter the same and cause to be made of the goods and chattels in your bailiwick of *C. D.* the sum of £——, which in our court before the barons of our Exchequer at Westminster were awarded to *A. B.* for his damages which he sustained as well on occasion of not performing certain promises and undertakings [*or "a certain promise and undertaking," as in the judgment*], made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as by inspecting the rolls of our said Exchequer appears to us; together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of —— (*a*), in the year of our Lord ——, on which day the judgment aforesaid was entered up; and have you that money, with such interest as aforesaid, before the barons of our Exchequer at Westminster immediately after the

surrounded by another, the sheriff of the county may be commanded "that be cause to be made of the goods and chattels of *C. D.* in his bailiwick, or within any district or place which is wholly situate within and surrounded by the county of ——;" or if the writ be directed to the sheriff of the surrounding county, "within any district or place which is wholly situate

within and surrounded by your county."

(*a*) The day on which the judgment was entered up, or if entered up prior to the 1st October, 1838, say "from the 1st day of October, in the year of our Lord 1838," omitting the words "on which day the judgment aforesaid was entered up."

execution hereof (a) [or "on —"], to be then and there paid to the said *A. B.* or his attorney on his behalf, for his damages and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to our said barons at Westminster immediately after the execution thereof, and have you there this writ. Witness — (*name of chief baron*), at Westminster, the — day of —, in the year of our Lord —.

Indorse it thus: "Levy the whole, and interest at £4 per cent. from —, 1840, [or 'levy £—,'] besides sheriff's poundage, officers' fees, and all other incidental expenses."

"The within writ was issued on the — day of —, 1840, by *A. A.* of —, attorney for the within-named plaintiff."

3. *Fi. fa. for Plaintiff in Debt in Q. B. or C. P.*

Victoria [&c. *as ante*, 148,] to the sheriff of —, greeting: We command you that of the goods and chattels in your bailiwick of *C. D.* you cause to be made as well a certain debt of £— which *A. B.* lately recovered against him in our court before us [or in *C. P.* "before our justices"] at Westminster, as also £— which in our same court were awarded to the said *A. B.* for his damages which he sustained, as well on occasion of detaining the said debt as for his costs and charges (b) by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record, [or in *C. P.* omit "as appears to us of record,"] together with interest upon the said several sums of £— and £— at the rate of £4 per centum per annum, from the — day of — (c) *A.D.* —, on which day the judgment aforesaid was entered up, and have you that money, with such interest as aforesaid, before us [or in *C. P.* "before our justices"] at Westminster, immediately after the execution hereof [or "on —"], to render unto the said *A. B.* for his debt and damages and interest aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us [or in *C. P.* "to our said justices"] at Westminster immediately after the execution hereof, and have you there then [or in *C. P.* omit the word "then"] this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse the writ as directed with respect to the fi. fa. ante*, 149.]

4. *The like, in Exchequer.*

Victoria [&c. *as ante*, 148, No. 1,] to the sheriff of —, greeting: We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and cause to be made of the goods and chattels within your bailiwick of *C. D.* as well a certain debt of £—, which *A. B.* lately in our court, before the barons of our Exchequer at Westminster, recovered against him, as also £—, which in our same

(a) The 3 & 4 Will. 4, c. 67, s. 2, allows the writ to be returnable immediately after the execution of it. You may still, however, make it returnable on a particular day, and, it

should seem, whether that day be in term or vacation.

(b) See *Phillips v. Bacon*, 9 East, 298.

(c) See note (a), last page.

court were awarded to the said *A. B.* for his damages which he sustained as well on occasion of detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as by inspecting the rolls of our said Exchequer appears to us, together with interest upon the said several sums of £—— and £——, from the —— day of —— (*a*), *A. D.* ——, on which day the judgment aforesaid was entered up: And have that money, with such interest as aforesaid, before the barons of our said Exchequer immediately after the execution hereof [*or “on ——”*], to be then and there paid to the said *A. B.* or his attorney in this behalf, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and in what manner you shall have executed this our writ make appear to the said barons at Westminster immediately after the execution thereof, and have there this writ. Witness —— (*name of chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

[*Indorse it as directed with respect to the fi. fa. ante, 150, No. 2.*]

5. *The like, in Debt qui tam, in Q. B., C. P., or Exch.*

Victoria [*&c., as ante, 148, No. 1,*] to the sheriff of ——, greeting: We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made a certain debt of £——, which *A. B.*, who sued as well for us as for himself in that behalf, lately in our court before us [*or in C. P. “before our justices,” or in Exch. “before the barons of our Exchequer”*], at Westminster, recovered against the said *C. D.*, that is to say, one moiety thereof to our own proper use, and the other moiety thereof to the said *A. B.*, who sued as aforesaid, to his own proper use, [*and if the judgment was for costs, add “and also £——, which in our said court were adjudged to the said A. B., who sued as aforesaid and with his assent, according to the form of the statute in such case made and provided, for his costs and charges by him about his suit in that behalf expended”*], whereof the said *C. D.* is convicted, as appears to us of record, [*or in C. P. omit the words “appears to us of record.” or in Exch. substitute “as by inspecting the rolls of our Exchequer appears”*], together with interest upon the said several sum[s] of £——, [*and £——,*] at the rate of £4 per centum per annum from the —— day of —— (*a*), *A. D.* ——, on which day the judgment aforesaid was entered up, and have that money with such interest as aforesaid before us [*or in C. P. “before our justices,” or in Exch. “before the barons of our Exchequer”*] at Westminster, immediately after the execution hereof, [*or “on ——,”*] one moiety thereof to be rendered to us and the other moiety thereof to the said *A. B.* who sued as aforesaid [*or, if there are costs, “one moiety of the said debt of £—— and interest to be rendered to us, and the residue thereof and interest, as well as the said sum of £——, for the costs and charges aforesaid, to the said A. B., who sued as aforesaid”*]; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and in what manner you shall have executed this our writ make appear to us [*or in C. P. “to our justices,” or in Exch. “to the barons of our Exchequer,”*] at Westminster, immediately after the execution thereof, and have there then [*or in C. P. omit the word “then”*] this

(*a*) See page 149, n. (*a*).

writ. Witness — (name of chief justice, or in Exch. of chief baron), at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as directed with respect to the *fi. fa. ante*, 149.]

6. *Fi. fa. for Plaintiff in Covenant.*

[Same as in the *fi. fa. in assumpsit*, ante, 148, 149, Nos. 1, 2, except that instead of the words "on occasion of not performing certain promises and undertakings made by the said C. D. to the said A. B." say "on occasion of the breach of a certain covenant (or 'certain covenants') made by the said C. D. to the said A. B."]

7. *Fi. fa. and Distringas for Plaintiff in Detinue in Q. B. or C. P.*

Victoria [&c. as ante, 148, No. 1,] to the sheriff of —, greeting: We command you, that of the goods and chattels in your bailiwick of C. D. you cause to be made the sum of £—, which in our court before us [or in C. P. "before our justices"] at Westminster were awarded to A. B. for his damages which he sustained, as well on occasion of the detaining certain goods and chattels [or "deeds and writings, &c." as in the judgment] of the said A. B. by the said C. D. as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as appears to us of record [or in C. P. omit "as appears to us of record,"] together with interest upon the said sum of £—, at the rate of £4 per centum per annum from the — day of — (a), on which day the judgment aforesaid was entered up, and have you that money before us [or in C. P. "before our justices"] at Westminster, immediately after the execution hereof [or "on —"], to render to the said A. B. for his said damages and interest, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [or in C. P. "to our justices"] at Westminster, immediately after the execution thereof. We also command you, that you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him, do lay hands on the same, until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said C. D. render to the said A. B. the said goods and chattels [deeds and writings], that is to say [&c. here enumerate the goods, &c. as in the judgment], or the sum of £— for the value of the same; whereof the said C. D. is also convicted, as appears to us of record [or in C. P. omit "as appears to us of record"]: And in what manner you shall have executed this part of our command make appear to us [or in C. P. "to our justices"] at Westminster, immediately after the execution hereof [or "on the same day above written"], and have you there then [or in C. P. omit the word "then"] this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

Indorse it thus: "Levy under the within Fieri Facias £—, and interest at £4 per cent. from —, 1839, besides sheriff's poundage, officers' fees, and all other incidental expenses. (In the Queen's Bench add, "The defendant is a [tailor] and resides at [No. —, — Street.] P. A. [Temple], plaintiff's attorney.")

(a) See 149, n. (a).

8. *The like, in Exchequer.*

Victoria [*&c. as ante*, 148, No. 1,] to the sheriff of —, greeting: We command you, that you omit not by reason of any liberty of your county, but that you enter the same and cause to be made of the goods and chattels in your bailiwick of C. D. the sum of £——, which in our court before the barons of our Exchequer, at Westminster, were awarded to A. B. for his damages which he sustained as well on occasion of the detaining of certain goods and chattels [*or “deeds and writings, &c. as in the judgment”*] of the said A. B. by the said C. D. as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as by inspecting the rolls of our said Exchequer appears to us; together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the — day of — (a), on which day the judgment aforesaid was entered up, and have you that money before the barons of our Exchequer at Westminster, immediately after the execution hereof [*or “on —,”*] to be then and there paid to the said A. B. or his attorney in this behalf: We also command you that you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither he the said C. D., nor any one for him, do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said C. D. render to the said A. B. the said goods and chattels [*deeds and writings*], that is to say, [*&c. enumerate the goods, &c. as in the judgment,*] or the sum of £—— for the value of the same, whereof the said C. D. is also convicted, as by inspecting the rolls of our said Exchequer appears to us; and in what manner you shall execute this part of our command make appear to the barons of our Exchequer immediately after the execution hereof [*or “on the same day above written,”*] and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf: and in what manner you shall have executed this our writ make appear to the barons of our said Exchequer at Westminster, immediately after the execution thereof, and have you there this writ. Witness — (*name of chief baron*), at Westminster, the — day of —, in the — year of our reign.

[*Indorse it as directed, ante*, 150, No. 2.]

9. *Fi. fa. for Plaintiff, in Case or Trover.*

[*Same as the fi. fa. in assumpsit, ante*, 148, 149, No. 1, 2, except that instead of the words “on occasion of not performing certain promises and undertakings made by the said C. D. to the said A. B.” say “on occasion of a certain grievance (*or ‘grievances’*) then lately committed by the said C. D. to the said A. B.”]

10. *Fi. fa. for Plaintiff, in Trespass.*

[*Same as the fi. fa. in assumpsit, ante*, 148, 149, No. 1, 2, except that instead of the words “on occasion of not performing certain promises and undertakings made by the said C. D. to the said A. B.” say “on occasion of a certain trespass (*or ‘certain trespasses’*) then lately committed by the said C. D. to the said A. B.”]

(a) See 149, n. (a).

11. *Fi. fa. where one Issue is found for Plaintiff and another for Defendant.*

[Same as in ordinary cases where the judgment is for the plaintiff only.]

12. *Fi. fa. where one Defendant is found guilty and another acquitted.*

[If the execution be for the plaintiff it is the same as in ordinary cases, where there is a verdict for plaintiff only; and if it be for the defendant, it is the same as in ordinary cases, where there is a verdict for the defendant only.]

13. *Fi. fa. in Assumpsit, by and against surviving Partners.*

Victoria [&c. as ante, 148, No. 1,] to the sheriff of —, greeting : We command you, that of the goods and chattels of *E. F.* in your bailiwick, you cause to be made £—, which *A. B.* and *C. D.* in the life-time of the said *C. D.* now deceased, and whom the said *A. B.* hath survived, lately in our court before us [or in *C. P.* "before our justices," or in the *Exchequer*, "before the barons of our Exchequer"] at Westminster, recovered against the said *E. F.* and one *G. H.* (the deceased partner) in his life-time now deceased, and whom the said *E. F.* hath survived, for their damages [&c. stating the promises to have been made by all the defendants, and to all the plaintiffs, and that the plaintiffs or defendants, according to the fact, were all of them convicted:] And have that money [&c. conclude as ante, 149, No. 1, in the *Queen's Bench* or *Common Pleas*, or as ante, 150, No. 2, in the *Exchequer*; stating that the damages are to be rendered or paid to the survivor, &c.]

14. *The like, in Debt.*

Victoria [&c. as ante, 148, No. 1,] to the sheriff of — greeting : We command you, that of the goods and chattels of *G. H.* and *I. K.* in your bailiwick, you cause to be made a certain debt of £—, which *A. B.*, *C. D.*, and *E. F.*, in the life-time of the said *E. F.* now deceased, and whom the said *A. B.* and *C. D.* have survived, lately in our court before us [or, in *C. P.* "before our justices," or, in the *Exchequer*, "before the barons of our Exchequer,"] at Westminster, recovered against the said *G. H.* and *I. K.* and *L. M.* in his life-time, now deceased, and whom the said *G. H.* and *I. K.* have survived, and also £—, which in our same court before us [or in *C. P.* "before our said justices," or in *Exch.* "before our said barons"] at Westminster, aforesaid, were adjudged to the said *A. B.*, *C. D.*, and *E. F.*, for their damages, [&c. as ante, 150, No. 3, 4,] whereof [&c. as ante, 149, No. 1.] And have that money [&c. as ante, 150, No. 3, in the *Q. B.* or *C. P.* or, as ante, 150, No. 4, in the *Exchequer.*]

15. *Fieri facias in Q. B. or C. P. in Vacation on Verdict for Plaintiff, the Judge having certified, under 1 Will. 4, c. 7, sect. 2, that such Writ ought to issue immediately.*

Victoria [&c. as ante, 148, No. 1,] to the sheriff of —, greeting : Whereas, at the assizes [or "at the sittings"] holden at —, in and for

the county [or "city"] of —, on the — day of — instant [or "last"] a certain action upon promises [or as the action was], wherein A. B. was plaintiff and C. D. was defendant, came on for trial at nisi prius before the Honourable —, one of the justices of her majesty's Court of Queen's Bench [or if a judge of C. P. say "one of the justices of her majesty's Court of Common Pleas," or if a baron of the Exch. say, "one or the barons of her majesty's Court of Exchequer,"] at Westminster, upon which the jury found a verdict for the plaintiff, for the sum of £— and costs; and thereupon the said judge [or "baron"] according to the form of the statute in such case made and provided, certified on the back of the record, that in his opinion execution ought to issue in the said action forthwith for the whole of the said sum found by the said verdict [let this be according to the terms of the certificate] (a) and judgment was thereupon on the — day of — instant [or "last"] duly signed and recovered by the said A. B. against the said C. D. in the said action, for the sum of £— damages [or in debt say, "debt and damages"] whereof the said C. D. is convicted.* Therefore we command you, that of the goods and chattels of the said C. D. in your bailiwick you cause to be made the said sum of £—, together with interest upon that sum at the rate of £4 per centum per annum from the — day of —, A. D. —, on which day the judgment aforesaid was entered up, and that you have that money before us [or in C. P. "before our justices"] at Westminster, immediately after the execution hereof [or "on —"], to be rendered to the said A. B. for his damages [or in debt say, "debt and damages"] and interest aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [or in C. P. "to our justices"] at Westminster, immediately after the execution thereof, and have there then [or in C. P. omit the word "then"] this writ. Witness —, (name of chief justice) at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as directed with respect to the *fi. fa. ante*, 149.]

[See 1 Chit. Ar. Pr. 553.]

16. The like, in Exchequer.

[Same as last to the asterisk*, and then thus:] Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same and cause to be made of the goods and chattels of the said C. D. in your bailiwick, the said sum of £—, together with interest on that sum at the rate of £4 per centum per annum from the — day of —, A. D. —, on which day the judgment aforesaid was entered up, and that you have that money before the barons of our Exchequer, at Westminster, immediately after the execution hereof [or "on —"] to be paid to the said A. B. or his attorney in his behalf, and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf: and in what manner you shall have executed this our writ make appear to the barons of our Exchequer at Westminster, immediately after the execution thereof, and have there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as directed with respect to the *fi. fa. ante*, 150, No. 2.]

(a) See the form of the certificate, *ante*, 101.

17. *Fi. fa. for Plaintiff in Assumpsit, in Q. B. or C. P., after a Levy of Part.*

Victoria [&c. *as ante*, 148, No. 1.] to the sheriff of ——— greeting: Whereas by our writ we lately commanded you that you should cause to be made of the goods and chattels in your bailiwick of C. D. the sum of [&c. *as in the fi. fa. ante*, 148, No. 1, *to the words*] whereof the said C. D. was convicted, as appeared to us of record [*or in C. P. omit the words* “as appeared to us of record”] together with interest [&c. *as in the fi. fa. ante*, 148, No. 1,] and that you should have that money before [&c. *as in the fi. fa. ante*, 148, No. 1,] and that you should do all such things [&c. *as in the fi. fa. ante*, 148, No. 1,] and that you should have there then [*or in C. P. omit the word* “then”] that writ. And you on ——— [*or* “at that day”] return to us [*or in C. P.* “to our justices,”] at Westminster aforesaid, that by virtue of the said writ you had caused to be made of the goods and chattels of the said C. D. £——, parcel of the damages and interest aforesaid, which said money you had ready at the time [*or* “day”] and place in the said writ contained, as by the said writ you were commanded; and that the C. D. had not any other or more goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in your bailiwick, whereof you could cause to be made the residue of the said damages and interest, or any part thereof, according to the exigency of that writ*, [*let this agree with the return.*] Therefore we command you, that you cause to be made of the goods and chattels in your bailiwick of the said C. D. the sum of £——, residue of the damages aforesaid; together with interest upon the said sum of £—— [&c. *conclude as in the fi. fa. ante*, 149, No. 1.]

[*Indorse it as directed, with respect to the fi. fa. ante*, 149.]

[*See 1 Chit. Ar. Pr.* 438.]

18. *The like, in Exchequer.*

Victoria [&c. *as ante*, 148, No. 1,] to the sheriff of ———, greeting: Whereas by our writ we lately commanded you that you should not omit by reason of any liberty of your county, but that you should enter the same and cause to be made of the goods and chattels in your bailiwick of C. D. the sum of [&c. *as in the fi. fa. ante*, 149, No. 2, *to the words*] whereof the said C. D. was convicted, as by inspecting the rolls of our said Exchequer appeared to us, together with interest [&c. *as in the fi. fa. ante*, 149, No. 2,] and that you should have that money before the barons of our Exchequer, at Westminster, immediately after the execution thereof, [*or* “on ———,”] to be then and there paid to the said A. B. or his attorney in that behalf, and that you should do all such things [&c. *as in the fi. fa. ante*, 149, No. 2,] and that you should have there that writ. And you on ——— [*or* “at that day”] returned to the barons of our Exchequer, at Westminster, that by virtue of the said writ you had caused to be made of the said goods and chattels of the said C. D. £——, parcel of the damages and interest aforesaid, which said money you had ready at the day and place in the said writ contained, as by the said writ you were commanded; and that the said C. D. had not any other or more goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in your bailiwick, whereof you could cause to be made the residue of the said damages and interest, or any part thereof, according to the exigency of that writ, [*let this agree with the return.*] Therefore we command you that you omit

not by reason of any liberty of your county, but that you enter the same, and cause to be made of the goods and chattels in your bailiwick of the said *C. D.* the sum of £ —, residue of the damages aforesaid, together with interest upon the said sum of £ — [*&c. conclude as in the fi. fa. ante, 150, No. 2.*]

[*Indorse it as directed with respect to the fi. fa. ante, 150, No. 2.*]

19. *Fi. fa. for Plaintiff in Debt in Q. B. or C. P. after a Levy of Part.*

Victoria [*&c. as ante, 148, No. 1,*] to the sheriff of —, greeting: Whereas by our writ we lately commanded you that you should cause to be made of the goods and chattels in your bailiwick of *C. D.* as well a certain debt of [*&c. as in the fi. fa. ante, 150, No. 3, to the words*] whereof the said *C. D.* was convicted, as appeared to us of record, [*or in C. P. omit “as appeared to us of record,”*] together with interest [*&c. as in the fi. fa. ante, 150, No. 3,*] and that you should have that money, together with such interest as aforesaid, before [*&c. as in the fi. fa. ante, 150, No. 3,*] and that you should have there then [*or in C. P. omit the word “then”*] that writ. And you on — [*or “at that day”*] returned to us [*or in C. P. “to our justices,”*] at Westminster aforesaid, that, by virtue of the said writ, you had caused to be made of the goods and chattels of the said *C. D.* £ —, parcel of the debt and damages and interest aforesaid, which said money you had ready at the time [*or “day”*] and place in the said writ contained, as by the said writ you were commanded; and that the said *C. D.* had not any other or more goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in your bailiwick, whereof you could cause to be made the residue of the said debt and damages and interest, or any part thereof, according to the exigency of that writ, [*let this agree with the return.*] Therefore we command you that you cause to be levied of the goods and chattels in your bailiwick of the said *C. D.* the sum of £ —, residue of the debt and damages aforesaid, together with interest upon that sum [*&c. conclude as in the fi. fa. ante, 150, No. 3.*]

[*Indorse it as directed with respect to the fi. fa. ante, 149.*]

20. *The Like, in Exchequer.*

Victoria [*&c. as ante, 148, No. 1,*] to the sheriff of —, greeting: Whereas by our writ we lately commanded you that you should not omit by reason of any liberty of your county, but that you should enter the same, and cause to be levied of the goods and chattels in your bailiwick of *C. D.* as well a certain debt of [*&c. as in the fi. fa. ante, 150, No. 4, to the words*] whereof the *C. D.* was convicted, as by inspecting the rolls of our said Exchequer appeared to us, together with interest [*&c. as in the fi. fa. ante, 150, No. 4,*] and that you should have that money, with such interest as aforesaid, before the barons of our said Exchequer immediately after the execution thereof [*or “on — then next coming,”*] to be then and there paid to the said *A. B.* or his attorney in this behalf, and that you should have there that writ. And you on — [*or “at that day”*] returned to the barons of our said Exchequer at Westminster aforesaid, that by virtue of the said writ you had caused to be made of the goods and chattels in your bailiwick of the said *C. D.* £ —, parcel of the debt and damages aforesaid, which said money you had ready at the day and place in the said writ contained, as by the said writ you were commanded; and

that the said *C. D.* had not any other or more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in your bailiwick, whereof you could cause to be made the residue of the said debt and damages and interest, or any part thereof, according to the exigency of that writ, [*let this agree with the return.*] Therefore we command you that you omit not by reason of any liberty in your county, but that you enter the same and cause to be levied of the goods and chattels in your bailiwick of the said *C. D.* the sum of £——, residue of the debt and damages aforesaid, together with interest upon the said sum of £—— [*&c. as in the fi. fa. ante, 151, No. 4, to the end.*]

[*Indorse this writ as directed, ante, 149.*]

21. *Fi. fa. for Plaintiff in Covenant, after a Levy of Part.*

[*Same as in a fi. fa. in assumpsit, ante, 148, except that instead of the words "on occasion of not performing certain promises and undertakings made by the C. D. to the said A. B. say, "on occasion of the breach of a certain covenant (or 'covenants') made by the said C. D. to the said A. B."*]

22. *The like, in Case or Trover.*

[*Same as in assumpsit, ante, 156, No. 17, 18, except that instead of the words "on occasion of not performing certain promises and undertakings made by the said C. D. to the said A. B." say, "on occasion of a certain grievance (or 'grievances') then lately committed by the said C. D. to the said A. B."*]

23. *The like, in Trespass.*

[*Same as the fi. fa. in assumpsit, ante, 156, No. 17, 18, except that instead of the words "on occasion of not performing certain promises and undertakings made by the said C. D. to the said A. B." say, "on occasion of a certain trespass (or 'trespasses') then lately committed by the said C. D."*]

24. *Alias Fi. Fa.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting (a): We command you, as before we have commanded you, that [*&c. conclude as in a fi. fa. as usual. See the preceding forms. Indorse it as directed with respect to the fi. fa., ante, 149.*]

[*See 1 Chit. Ar. Pr. 438.*]

25. *Pluries Fi. Fa.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting (a): We command you, as oftentimes before we have commanded you, that [*&c. conclude as in a fi. fa. as usual. See the preceding forms. Indorse it as directed with respect to the fi. fa. ante, 149.*]

[*See 1 Chit. Ar. Pr. 438.*]

(a) See as to the different directions of writs, ante, 30, n. (a).

26. *Non omittas Fi. Fa.*

Victoria [&c. *as ante*, 148, No. 14,] to the sheriff of —, greeting: We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and cause to be made of the goods and chattels [&c. *proceed and conclude as in a fi. fa. as usual. Indorse it as directed with respect to the fi. fa. ante*, 149.]

27. *Testatum Fi. Fa. in Q. B. or C. P.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of [Leicestershire], greeting (a): Whereas, by our writ we lately commanded our sheriff of [Sussex] that he should cause to be made of the goods and chattels in his bailiwick of C. D. [*if in assumpsit*, “the sum of £——, which in our court before us [*or in C. P.* ‘before our justices’] at Westminster, were awarded to A. B. for his damages, which he sustained as well on occasion of not performing certain promises (and undertakings) made by the said C. D. to the said A. B.”—*if in debt or covenant, case or trespass &c.*, *as in the respective fi. fa.’s, ante*, 148 to 158,] as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. was convicted, as appeared to us of record, [*or in C. P.* omit “as appeared to us of record,”] together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the day of —— (b), A. D. ——, on which day the judgment aforesaid was entered up, and that he should have that money, with such interest as aforesaid, before us [*or in C. P.* “before our justices”] at Westminster, immediately after the execution thereof [*or “on ——”*], to render to the said A. B. for his damages [*or “debt and damages”*] and interest aforesaid, and that he should do all such things as by the statute passed in the second year of our reign he was authorized and required to do in that behalf. And our said sheriff of [Sussex] on —— [*or “at that day”*] returned to us [*or in C. P.* “to our justices at Westminster”], that the said C. D. had no goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, whereof he could cause to be made the damages [*or “debt and damages”*] and interest aforesaid, or any part thereof, [*let this agree with the return, if any.*] Whereupon on the behalf of the said A. B. it is testified in our said court, that the said C. D. hath goods and chattels sufficient within your bailiwick, whereof you may cause to be levied the damages [*or “debt and damages”*] and interest aforesaid; therefore we command you, that you cause to be made of the goods and chattels in your bailiwick of the said C. D. £——, for the damages [*or “£—— for the debt, and £—— for the damages”*] aforesaid, together with the interest upon the said sum of £——, at the rate of £4 per centum per annum from the —— day of —— (b), A. D. ——, on which day the judgment aforesaid was entered up, and have that money, with such interest as aforesaid, before us [*or in C. P.* “before our justices”] at Westminster, immediately after the execution hereof [*or “on ——”*], to render to the said A. B. for his said damages [*or “debt and damages”*] and interest, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and in what manner you shall have executed this our writ make appear to us

(a) See as to the different directions of writs, *ante*, 20, n. (a).

(b) See 149, n. (a).

[*or in C. P. "to our justices"*] at Westminster, immediately after the execution thereof; and have you there then [*or in C. P. omit the word "then"*] this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse it as directed with respect to the fi. fa. ante, 149, No. 1.*]

[*See 1 Chit. Ar. Pr. 576.*]

28. *The like, in Exchequer.*

Victoria, [*&c. as ante, 148, No. 1,*] to the sheriff of [Leicestershire], greeting (a): Whereas by our writ we lately commanded our sheriff of [Sussex] that he should not omit by reason of any liberty of his county, but that he should enter the same, and cause to be levied of the goods and chattels in his bailiwick of C. D. the sum of £—, which in our court before the barons of our Exchequer at Westminster were awarded to A. B. for his damages, which he sustained as well on occasion of not performing certain promises and undertakings made by the said C. D. to the said A. B. [*or if in debt or covenant, &c. as in the respective forms, ante, 148 to 158*], as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. was convicted, as by inspecting the rolls of our said Exchequer appeared to us, together with interest upon the said sum of £—, at the rate of £4 per centum per annum, from the — day of — (b), A. D. —, on which day the judgment aforesaid was entered up, and that he should have that money, with such interest as aforesaid, before the barons of our Exchequer at Westminster, immediately after the execution thereof [*or "on —"*], to be then and there paid to the said A. B. or his attorney in that behalf, and that he should do all such things as by the statute passed in the second year of our reign he was authorized and required to do in that behalf. And our said sheriff of [Sussex] on — [*or "at that day"*] returned to the barons of our Exchequer at Westminster, that the said C. D. had no goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, whereof he could cause to be made the damages [*or "debt and damages"*] and interest aforesaid, or any part thereof, [*let this agree with the return, if any.*] Whereupon, on the behalf of the said A. B., it is testified in our said court that the said C. D. hath goods and chattels sufficient within your bailiwick, whereof you may cause to be levied the damages [*or "debt and damages"*] and interest aforesaid; therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same and cause to be made of the goods and chattels in your bailiwick of the said C. D. £—, for the damages [*or "£— for the debt, and £— for the damages"*] aforesaid, together with interest upon the said sum of £—, at the rate of £4 per centum per annum, from the — day of — (b), A. D. —, on which day the judgment aforesaid was entered up, and have that money, with such interest as aforesaid, before the barons of our Exchequer at Westminster, immediately after the execution hereof [*or "on —"*], to render to the said A. B. for his said damages and interest [*or "debt and damages and interest,"*] and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall [*&c. conclude as in the form, ante, 150, No. 2.*]

[*Indorse it as directed with respect to the fi. fa., ante, 150, No. 2.*]

(a) See as to the different directions of writs, *ante*, 20, n. (a).

See 149, n. (a).

29. *Fi. fa. to a County Palatine.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the chancellor of our county palatine of Lancaster [or "Durham," (a)] or his deputy, greeting: We command you, that by our writ, under the seal of our said county palatine, to be duly made, and to be directed to the sheriff of our said county palatine, you cause the said sheriff to be commanded that he cause to be made of the goods and chattels in his bailiwick of C. D. [*&c. proceed as in an ordinary form of fi. fa., see ante, 148, 149, 150, &c.*] And have you that money [*&c. conclude as in an ordinary form of fi. fa., see ante, 149, 150, No. 1, 2, &c.*]

[Indorse it as directed with respect to the *fi. fa.*, ante, 149, No. 1.]

30. *Fi. fa. to a County Palatine, after a Levy of Part.*

Victoria, [*&c. as in the fi. fa. supra, to the word*] greeting: Whereas by our writ we lately commanded you, that by our writ under the seal of our said county palatine, to be duly made, and to be directed to the sheriff of our said county palatine, you should cause the said sheriff to be commanded that he should cause to be made of the goods and chattels in his bailiwick of C. D. [*&c. as in the fi. fa. to the words "whereof the said C. D. was convicted, as appeared to us of record,"*] or in C. P. omit "as appeared to us of record," or in Exch. say, "as by inspecting the rolls of our said Exchequer appeared to us,"] together with interest [*&c. as in the fi. fa.*] and that he should do all such things as by the statute passed in the second year of our reign he was authorised and required to do in this behalf; and that you should have that money before [*&c. as in the fi. fa.*] and that you should have there [then] that writ. And you, on —, [or "at that day,"] returned to us [or in C. P. "to our justices," or in Exch. "to our barons,"] at Westminster aforesaid, that by virtue of the said writ to you directed, you had, by another writ under the seal of our said county palatine, duly made and directed to the sheriff of the said county palatine, commanded the said sheriff as by the said first-mentioned writ you were commanded; and which said sheriff, in answer to the said writ so directed to him as aforesaid, had returned to you that he had caused to be made of the goods and chattels of the said C. D. £——, parcel of the damages, [or "debt and damages,"] and interest therein mentioned, which said money he had ready at the time [or "day"] and the place in the said writ contained, as by the said writ he was commanded, and that the said C. D. had not any other or more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money in his bailiwick whereof he could cause to be made the residue of the said damages [or, "debt and damages,"] and interest, or any part thereof, according to the exigency of that writ*, [*let this agree with the return.*] Therefore we command you, that by our writ, under the seal of our said county palatine, to be duly made, and to be directed to the sheriff of our said county palatine, you cause the said sheriff to be commanded that he cause to be made of the goods and chattels in his bailiwick of the said C. D. the sum of £——, residue of the damages, [or "debt and damages"] aforesaid, together with interest; [*&c. conclude as in ordinary form of fi. fa.; see ante, 149, 150, No. 1, 2.*]

[Indorse it as directed with respect to the *fi. fa.*, ante, 149, 150, No. 1, 2, according to the court out of which it is issued.]

(a) See as to Durham, ante, 21, n. (b).

31. *Alias or Pluries Fi. fa. to a County Palatine.*

Victoria [*&c. as in the form, ante, 160, No. 29, to the word*] greeting : We command you, as before [*or if a pluries, "as oftentimes"*] we have commanded you, that by our writ [*&c. proceed as in a fi. fa. to a county palatine as usual ; see ante, 160, No. 29.*]

32. *Testatum Fi. fa. to a County Palatine.*

Victoria [*&c. as in the fi. fa. ante, 160, No. 29,*] greeting : Whereas by our writ we lately commanded our sheriff of [Middlesex] that he should cause to be made of the goods and chattels in his bailiwick of *C. D.* [*&c. as in the fi. fa. to the words "whereof the said C. D. was convicted, as appeared to us of record," or in C. P. omit "as appeared to us of record," or in Exch. say, "as by inspecting the rolls of our said Exchequer appeared to us,"*] together with interest [*&c. as in fi. fa., ante, 149, No. 1, 149, No. 2,*] and that he should have that money before [*&c. as in the fi. fa.*] to render to the said *A. B.* for his damages [*or "debt and damages"*] and interest aforesaid. And our said sheriff of [Middlesex] on — [*or "at that day"*] returned to us [*or in C. P. "to our justices," or in Exch. "to our barons"*] at Westminster, that the said *C. D.* had no goods or chattels in his bailiwick whereof he could cause to be made the damages [*or "debt and damages"*] and interest aforesaid, or any part thereof, [*let this agree with the return, if any.*] Whereupon, on the behalf of the said *A. B.*, it is testified in our said court, that the said *C. D.* hath goods and chattels sufficient within our said county palatine, whereof the sheriff of the said county palatine may cause to be levied the damages [*or "debt or damages"*] and interest aforesaid : Therefore we command you, that by our writ, under the seal of our said county palatine, to be duly made and directed to the sheriff of our said county palatine, you cause the said sheriff to be commanded that he cause to be made of the goods and chattels in his bailiwick of the said *C. D.*, £—— for the damages [*or "£—— for the debt aforesaid, and £—— for the damages"*] aforesaid, together with interest, [*&c. conclude as in an ordinary form of fi. fa., see ante, 149, 150, No. 1, 2.*]

[*Indorse it as directed with respect to the fi. fa. ante, 149, 150, No. 1, 2, according to the court out of which it is issued.*]

33. *Testatum Fi. fa. from a County Palatine.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of [Middlesex] greeting : Whereas by our writ we lately commanded our chancellor of our county palatine of Lancaster [*or "Durham,"*] or his deputy, that by our writ, under the seal of our said county palatine, to be duly made, and to be directed to the sheriff of our said county palatine, he should cause the said sheriff to be commanded that he should cause to be made of the goods and chattels in his bailiwick of *C. D.*, [*&c. as in the fi. fa. to the words "whereof the said C. D. was convicted, as appeared to us of record," or in C. P. omit "as appears to us of record," or in the Exch. say "as by inspecting the rolls of our said Exchequer appears to us,"*] together with interest [*&c. as in fi. fa.*] and that he should do all such things as by the statute passed in the second year of our reign he was authorised and required to do in that behalf, and that he the said chancellor, or his deputy, should have that money before [*&c. as in the fi. fa.*] to render to the said *A. B.* for his damages [*or "debt or damages"*] and interest

aforesaid. And our said chancellor of our said county palatine [or other person by whom the return was made] on ——— [or “at that day”] returned to us [or in C. P. “to our justices,” or in Exchequer, “to our barons”] at Westminster, that by virtue of the said writ to him directed, he had, by another writ under the seal of our said county palatine, [or “under the seal of his bishopric,”] duly made and directed to the sheriff of the said county palatine, commanded the said sheriff as by the said first-mentioned writ he was commanded; and which said sheriff, in answer to the said writ so directed to him as aforesaid, had returned to our said chancellor of our said county palatine, [or other person by whom the return was made,] that the said C. D. had no goods or chattels in his bailiwick [&c. conclude as in the testatum *fi. fa. ante*, 158, 159, No. 27, or No. 28.]

[Indorse it as directed with respect to the *fi. fa. ante*, 149, 150, No. 1, 2, according to the court out of which it is issued.]

34. *Mandate to the Sheriff of a County Palatine in pursuance of a Fi. Fa.*

Victoria, [&c. as in the form, *ante*, 148, No. 1,] to the sheriff of Lancashire, [or “Durham” (a),] greeting: We command you [&c. as in the above writ of *fi. fa. to the teste*, commanding the sheriff in the second person to do what is required by the writ.] Witness ourself at Lancaster [or “Durham” (a),] the ——— day of ———, in the ——— year of our reign.

[Indorse it as directed with respect to the *fi. fa.*, *ante*, 149, 150, No. 1, 2, according to the court out of which the *fi. fa.* issued.]

35. *Venditioni Exponas, after a Levy of the Whole.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——— greeting: Whereas by our writ we lately commanded you that you should cause to be made of the goods and chattels in your bailiwick of C. D. [&c. as in the *fi. fa. to the words* “whereof the said C. D. was convicted, as appears to us of record,” or in C. P. omit “as appeared to us of record,” or in Exchequer say “as by inspecting the rolls of our said Exchequer appeared to us,”] together with interest [&c. as in the *fi. fa.*] and that you should have that money with such interest as aforesaid before us, [or in C. P. “before our justices,” or in Exchequer, “before our barons,”] at Westminster immediately after the execution thereof [or “on ———”] (as in the *fi. fa.*) to be rendered unto the said A. B. for his debt and damages [or “damages,”] and interest aforesaid, [or in Exchequer, to be then paid to the said A. B. or his attorney in that behalf,”] and that you should do all such things as by the statute passed in the second year of our reign you were authorized and required to do in that behalf;* and you on ——— [or “at that day”] returned to us, [or in C. P. “to our justices,” or in Exchequer, “to our barons,”] at Westminster, that by virtue of the said writ to you directed, you had taken goods and chattels of the said C. D. to the value of the debt and damages [or “damages”] and interest therein mentioned, which goods and chattels remained on your hands for want of buyers, and that therefore you could not have that money before us [or in C. P. “before our said justices,” or in Exchequer, “before our said barons,”] at the time [or “day”] and place therein contained, as you were thereby commanded. Therefore we, being desirous that the said A. B. should be satisfied his debt and damages [or “damages,”] aforesaid, command you, that you expose to sale, and sell or cause to be

(a) See as to Durham, p. 21, n. (b).

sold the said goods and chattels of the said C. D. so by you taken as aforesaid, for the best price you can get for the same, and at least for the debt and damages [or "damages"] and interest aforesaid; and have the money arising from such sale before us [or in C. P. "before our justices," or in *Exchequer* "before our barons"] at Westminster, immediately after the execution hereof [or "on —"], to render unto the said A. B. for his debt and damages [or "damages"] and interest aforesaid, [or in *Exchequer*, instead of the words "to render &c." say "to be then and there paid to the said A. B. or his attorney in this behalf,"] and have you there then [or in C. P. or in *Exchequer*, omit the word "then,"] this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 1 Chit. Ar. Pr. 436.]

36. *Venditioni Exponas, after a Levy of Part and Fi. Fa. for the Residue.*

[Same as in the preceding form to the asterisk*, and then thus :] and you on — [or "at that day"] returned to us [or in C. P. "to our justices," or in *Exchequer*, "to our barons"] at Westminster, that by virtue of the said writ to you directed, you had taken goods and chattels of the said C. D. to the value of [one hundred pounds], parcel of the debt and damages [or "damages"] and interest therein mentioned, which goods and chattels remained on your hands for want of buyers, and that therefore you could not have that money before us [or, in C. P. "before our said justices," or in *Exchequer*, "before our said barons"] at the time [or "day"] and place therein contained, as you were thereby commanded, and that the said C. D. had not any other or more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in your bailiwick, whereof you could cause to be made the residue of the debt and damages [or "damages"] and interest aforesaid, or any part thereof, [let this agree with the return]. Therefore we, being desirous that the said A. B. should be satisfied his debt and damages [or "damages"] and interest aforesaid, command you that you expose to sale, and sell or cause to be sold the said goods and chattels of the said C. D. so by you taken as aforesaid, and have the said sum of £100, parcel of the said debt and damages [or "damages"] and interest as aforesaid, before us [or in C. P. "before our justices," or in *Exchequer*, "before our barons"] at Westminster immediately after the execution hereof [or "on —"], to render unto the said A. B. in part satisfaction of his debt and damages [or "damages"] and interest aforesaid; and we also command you that you cause to be made of the goods and chattels in your bailiwick of the said C. D. £—, residue of the debt and damages [or "damages"] and interest aforesaid; and have that money, and also the money arising from the sale aforesaid, before us [&c. as in the preceding form to the words "this writ"] and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf: and how you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, and have there then this writ. Witness [&c. as in preceding form.]

[See 1 Chit. Ar. Pr. 436, 437.]

37. *Distringas nuper Vicecomitem quod Venditioni exponat.*

Victoria [&c. as ante, 163, No. 35, to the sheriff of — greeting:
Whereas by our writ we lately commanded S. S. esquire, late sheriff of

your county, that he should cause to be made of the goods and chattels in his bailiwick of *C. D.* [*&c. as in the fi. fa. to the words "whereof the said C. D. was convicted, as appeared to us of record," or in C. P. omit the words "as appeared to us of record;" or in Exchequer say "as by inspecting the rolls of our said Exchequer appeared to us,"*] together with interest [*&c. as in fi. fa.*] and that he should have that money with such interest aforesaid before us [*or in C. P. "before our justices," or in Exchequer, "before our barons,"*] at Westminster immediately after the execution thereof [*or "on —," (as in the fi. fa.)*] to be rendered unto the said *A. B.* for his debt and damages [*or "damages"*] and interest aforesaid, [*or in Exchequer, "to be then and there paid to the said A. B. or his attorney in that behalf,"*]* and that he should do all such things as by the statute passed in the second year of our reign he was authorised and required to do in that behalf, and he on — [*or "at that day,"*] returned to us [*or in C. P. "to our justices," or in Exchequer "to our barons"*] at Westminster, that, by virtue of the said writ to him directed, he had taken goods and chattels of the said *C. D.* to the value of the debt and damages [*or "damages"*] and interest therein mentioned, which goods and chattels remained on his hands for want of buyers, and that therefore he could not have that money before us [*or in C. P. "before our justices," or in Exchequer, "before our barons,"*] at the time [*or "day"*] and place therein contained, as he was thereby commanded. Therefore we, being desirous that the said *A. B.* should be satisfied his debt and damages [*or "damages"*] and interest aforesaid, command you that you distrain the said *S. S.*, late sheriff of your county as aforesaid, by all his lands and chattels in your bailiwick, so that neither he nor any one by him do lay hands on the same, until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said *S. S.* expose to sale and sell, or cause to be sold, the said goods and chattels of the said *C. D.* so by him taken as aforesaid, for the best price he can get for the same, and at least for the debt and damages [*or "damages"*] and interest aforesaid; and have that money before us [*or in C. P. "before our justices," or in Exchequer, "before our barons,"*] at Westminster, immediately after the execution hereof [*or "on —,"*] to render unto the said *A. B.* for his debt and damages [*or "damages"*] and interest aforesaid, [*or in Exchequer, "to be then and there paid to the said A. B. or his attorney in this behalf,"*] and have you there then [*or in C. P. or in Exchequer, omit the word "then,"*] this writ. Witness — — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 1 Chit. Ar. Pr. 438.]

38. *Distringas nuper Vicecomitem quod Venditioni exponat as to Part, and Fi. Fa. for the Residue.*

[Same as in the preceding form to the*, and then thus:] And he on — [*or "at that day,"*] returned to us, [*or in C. P. "to our justices," or in Exchequer, "to our barons,"*] at Westminster, that by virtue of the said writ to him directed, he had taken the goods and chattels of the said *C. D.* to the value of [£100], parcel of the debt and damages [*or "damages"*] and interest therein mentioned, which goods and chattels remained on his hands for want of buyers, and that therefore he could not have that money before us, [*or in C. P. "before our said justices," or in Exchequer "before our barons,"*] at the time [*or "day"*] and place therein contained, as he was thereby commanded, and that the said *C. D.*

had not any other or more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money in his bailiwick, whereof he could cause to be made the residue of the debt and damages [or "damages"] and interest aforesaid, or any part thereof, [*let this agree with the return*]. Therefore we, being desirous that the said *A. B.* should be satisfied his debt and damages [or "damages"] and interest aforesaid, command you that you distrain the said *S. S.*, late sheriff of your county as aforesaid, by all his lands and chattels in your bailiwick, so that neither he nor any one by him do lay hands on the same, until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said *S. S.* expose to sale, or sell or cause to be sold, the said goods and chattels of the said *C. D.* so by him taken as aforesaid; and have the said sum of £100, parcel of the said debt and damages [or "damages"] and interest as aforesaid, before us, [or in *C. P.* "before our said justices," or in *Exchequer* "before our barons"] at Westminster immediately after the execution hereof [or "on—"], to render unto the said *A. B.* in part satisfaction of his debt and damages [or "damages"] and interest aforesaid, [or in *Exchequer* "to be then and there paid to the said *A. B.* or his attorney in this behalf."] And we also command you that you cause to be made of the goods and chattels in your bailiwick of the said *C. D.* £——, residue of the debts and damages [or "damages"] and interest aforesaid, and have that money, and also the said sum of £100, parcel, &c. before us, [or in *C. P.* "before our justices," or in *Exchequer*, "before our barons"] at the day and place last aforesaid, to render unto the said *A. B.* for his debt and damages [or "damages"] and interest aforesaid, [or in *Exchequer*, "to be then and there paid to the said *A. B.* or his attorney in this behalf,"] and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution hereof; and have you there then [or in *C. P.* *Exchequer* omit the word "then"] this writ. Witness — (the name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 1 Chit. Ar. Pr. 438.]

39. *Venditioni Exponas to a County Palatine* (a).

Victoria, &c. to the chancellor [&c. *as ante*, 160, No. 29,] greeting: Whereas by our writ we lately commanded you, that by our writ, under the seal of our said county palatine, to be duly made, and to be directed to the sheriff of our said county palatine, you should cause the said sheriff to be commanded that he should cause to be made of the goods and chattels in his bailiwick of *C. D.* [&c. *as in the fi. fa. to the words* "whereof the said *C. D.* was convicted, as appeared to us of record," or in *C. P.* omit the words "as appeared to us of record," or in *Exchequer* say, "as by inspecting the rolls of our Exchequer appeared to us,"] together with interest [&c. *as in fi. fa.*], and that he should do all such things as by the statute passed in the second year of our reign he was authorised and required to do in that behalf: and that you should have that money, with such interest as aforesaid, before us [as in the *fi. fa.*], to be rendered unto the said *A. B.* for his damages [or "debt and damages"] and interest aforesaid, [or in *Exchequer*, "to be then and there paid to the said *A. B.* or

(a) See as to Durham, *ante*, 21, note (b).

his attorney in that behalf." And you on — [or "at that day"] returned to us [or in C. P. "to our justices," or in Exchequer, "to our barons,"] at Westminster aforesaid, that by virtue of the said writ to you directed, you had, by another writ under the seal of our said county palatine, duly made and directed to the sheriff of the said county palatine, commanded the said sheriff as by the first-mentioned writ you were commanded*; and which said sheriff, in answer to the said writ so directed to him as aforesaid, had returned to you that he had taken goods and chattels of the said C. D. to the value of the damages [or "debt and damages"] and interest therein mentioned, which goods and chattels remained in his hands for want of buyers, and that therefore you could not have that money before us [or in C. P. "before our said justices," or in Exchequer, "before our said barons,"] at the time [or "day"] and place in the said first-mentioned writ contained, as you were thereby commanded. Therefore we, being desirous that the said A. B. should be satisfied his damages [or "debt and damages"] and interest aforesaid, command you that by our writ, under the seal of our said county palatine, to be duly made, and to be directed to the said sheriff of our said county palatine, you cause the said sheriff to be commanded that he expose to sale and sell, or cause to be sold, the said goods and chattels of the said C. D. so by him taken as aforesaid, for the best price he can get for the same, and at least for the damages [or "debt and damages"] and interest aforesaid; and have the money arising from such sale before us, [or in C. P. "before our justices," or in Exchequer, "before our barons,"] at Westminster, immediately after the execution hereof [or "on —"], to render unto the said A. B. for his damages [or "debt and damages"] and interest aforesaid, [or in Exchequer, "to be then and there paid to the said A. B. or his attorney in this behalf,"] and have you there then [or in C. P. or in Exchequer omit the word "then"] this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 1 Chit. Ar. Pr. 436.]

40. *Venditioni Exponas to a County Palatine(a) after a Levy of Part, and Fi. Fa. for the Residue.*

[Same as in the preceding form to the asterisk*, and then thus:] And which said sheriff, in answer to the said writ so directed to him as aforesaid, had returned to you that he had taken goods and chattels of the said C. D. to the value of [£100] parcel of the damages therein mentioned, which goods and chattels remained in his hands for want of buyers, and that therefore he could not have that money before us, [or in C. P. "before our justices," or in Exchequer, "before our barons,"] at the time [or "day"] and place in the said writ contained, as by the said writ he was commanded, and that the said C. D. had not any other or more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, whereof he could cause to be made the residue of the damages [or "debt and damages"] and interest aforesaid, or any part thereof. Therefore we, being desirous that the said A. B. should be satisfied his damages [or "debt and damages"] and interest aforesaid, command you, that by our writ, under the seal of our said county palatine to be duly made, and to be directed to the said sheriff of our said county palatine, you cause the said sheriff to be commanded that he expose to sale and sell, or cause to

(a) See as to Durham, ante, 21, note (b).

be sold, the goods and chattels of the said *C. D.* so by him taken as aforesaid, and have the sum of [£100] parcel of the said damages [or "debt and damages"] and interest aforesaid, before us, [or in *C. P.* "before our justices," or in *Exchequer*, "before our barons,"] at Westminster, immediately after the execution hereof [or "on —"] to render unto the said *A. B.* in part satisfaction of his damages [or "debt and damages"] and interest aforesaid, [or in *Exchequer*, "to be then and there paid to the said *A. B.* or his attorney in this behalf,"] and also that he cause to be levied of the goods and chattels in his bailiwick of the said *C. D.* the sum of £——, residue of the damages [or "debt and damages"] and interest aforesaid: and that he do all such things as by the statute passed in the second year of our reign he is authorised and required to do in this behalf: and have you that money [&c. *as in the form, ante*, 165, No. 38, to the end.]

41. *Warrant on a Fieri Facias in debt.*

—— to wit. *S. S.* esquire, sheriff of the said county, to *B. B.* my bailiff, greeting: By virtue of her majesty's writ to me directed and delivered, I command you that you cause to be made of the goods and chattels of *C. D.* in my bailiwick, as well a certain debt of £—— which *A. B.* had recovered against him in her majesty's court before her majesty at Westminster, as also £—— which in her majesty's same court were awarded to the said *A. B.* for his damages which he sustained as well on occasion of the detaining the said debt, as for his costs and charges about his suit in that behalf expended, [or, if not in debt, or if in *C. P.* or *Exch.* alter the form accordingly, so as to correspond with the *fieri facias*,] together with interest upon the said several sums of £—— and £—— at the rate of £4 per centum per annum from the —— day of —— [as in *fi. fa.*], so that I may have that money before her said majesty [or in *C. P.* "before her majesty's justices," or in *Exch.* "before her majesty's barons"] at Westminster, immediately after the execution hereof [or "on ——"], to render to the said *A. B.* for the [debt and] damages aforesaid, [or in *Exch.* "to be then and there paid to the said *A. B.* or his attorney,"] and that you do all such things as by the statute passed in the second year of the reign of Queen Victoria you are authorised and required to do in this behalf; and have you this, and so forth. Given under the seal of my office, the —— day of —— A.D. ——.

By the sheriff.

(Seal of office.)

Levy £——, besides poundage, &c. (*Let this direction correspond with the indorsement on the writ.*)

42. *Rule to return the Writ in Term.*

In the *Q. B.* [or "*C. P.*" or "*Exch. of Pleas.*"]

On ——, in —— term, — Victoria.

B. } It is ordered, that the [late(a)] sheriffs of London shall within
v. } four days next after notice of this rule to be given to their second-
D. } aries, [or "that the (late(a)) sheriff of the county of —— shall within four days (in London or Middlesex, or eight days in any other county,) next after notice of this rule, to be given to his under-sheriff,"] peremptorily return the writ of *fieri facias* issued between the parties*.

Side Bar (*Q. B.* or *Exch.*) or "In the Treasury Chamber at the instance of the plaintiff" (*in C. P.*)

By the Court.

[See 1 *Chit. Ar. Pr.* 410.]

(a) Omit this word if the sheriffs be still in office.

43. Judge's Order to return Writ in Vacation(a).

B. } I order that the sheriff [&c. proceed as in the form, *supra*, No. 42,
v. } adopting the word "order," instead of the word "rule." Dated the
D. } — day of —, 1839.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 410.]

44. Affidavit of Service of Rule to return Writ, &c.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff against C. D. defendant.

C. C. of —, clerk to P. A. gentleman, attorney for the above-named plaintiff, maketh oath and saith, that he this deponent did, on the — day of — instant (or last) personally serve Mr. —, who is, or acts as deputy to the secondaries of the city of London, at their office, No. 5, Basinghall Street, [if in London: or, if in Middlesex, "Mr. —, who is or acts as deputy sheriff of the county of Middlesex;" or if in any other county, "Mr. —, who is the under-sheriff or deputy to the sheriff of the county of —, at his residence or office, situate &c."] with a true copy of the rule hereunto annexed; and at the same time showed him the said original rule. And this deponent further saith, that he has this day searched, [or "did on the — day of — instant, or last, search,"] in the proper office of this honourable court, for the return of the writ of *fieri facias* issued in this cause, but that the same was not filed in the said office.

Sworn [&c. See Index, tit. "Jurat."]

C. C.

[See 1 Chit. Ar. Pr. 410, 412.]

45. The like, of Service of Judge's Order, &c.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

[As in the preceding form to the end, substituting the word "order" for the word "rule," and concluding as follows:] "And this deponent further saith, that the said order was, on the — day of —, in this present — term, being the term next following the making and granting of the said order, made a rule of this honourable court, as appears by such rule hereunto annexed," (annexing it.)

Sworn [&c. See Index, tit. "Jurat."]

C. C.

46. Rule for Attachment for not returning the Writ(b).

On —, in — term, — Victoria.

B. } Upon reading the rule [or "order"] made in this cause on —,
v. } and the affidavit of C. C., it is ordered, that a writ of attachment
D. } issue against the sheriff of the county of —, for his contempt in not returning the writ of *fieri facias* issued in this cause, pursuant to the said rule [or "order."] Upon the motion of Mr. —.

By the Court.

[See 1 Chit. Ar. Pr. 410, 412.]

(a) This order is made without any affidavit, R. H. 1 Vict.

(b) In Q. B. a judge's order for returning the writ cannot be made a

rule of court, and an attachment for disobedience thereto obtained on one motion. *Semble*, aliter in Exchequer, 3 Dowl. 99.

47. *Attachment against the Sheriff for not returning the Writ, in Q. B.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the coroner of the county of —, greeting: We command you, that you attach S. S. esquire, sheriff of our said county, so that you may have him before us on —, to answer to us for certain trespasses and contempts by him lately done and committed in our court before us; and have there then this writ. Witness (*name of chief justice*) at Westminster, this — day of —, in the — year of our reign.

By the Court.

LUSHINGTON.

This writ is to be indorsed thus:—“By rule of court for not returning the writ of fieri facias, issued in a certain cause wherein A. B. is plaintiff, and C. D. is defendant, pursuant to a rule of court [or order of a judge,] with costs of attachment.”

Bridges, clerk in court.

P. A. solicitor for the prosecution.

The within-named S. S. is sheriff of the county of —, and resides at —. (a)

[See 1 Chit. Ar. Pr. 410, 412.]

48. *The like, in C. P.*

Victoria [*&c. as in the preceding form.*] To the coroner of —, greeting: We command you that you attach S. S. esquire, sheriff of our said county, so that you may have him before our justices at Westminster on —, to answer to us of and concerning those things which on our behalf shall then and there be objected against him; and have there then this writ. Witness (*name of chief justice*) at Westminster, this — day of —, in the — year of our reign. [*Indorse it as directed in the preceding form, except as to the place of abode and addition of the sheriff, which is not, it seems, required in this court.*]

49. *The like, in Exchequer.*

Victoria [*&c. as in the form supra, No. 47.*] To the coroner of —, greeting: We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same, and attach S. S. esquire, sheriff of our said county, by his body, wheresoever you shall find him in your bailiwick, and him safely keep, so that you may have him before the barons of our Exchequer at Westminster, on —, to answer to us concerning divers trespasses, contempts, and offences, by him lately done and committed; and have there then this writ. Witness (*name of chief baron*) at Westminster, this — day of — in the — year of our reign.

By the Barons.

This writ is to be indorsed thus:—

A. B. against C. D.

By rule of court, made the — day of —, [*the day of granting rule for attachment,*] for not returning the writ of fieri facias, issued in a certain cause wherein A. B. is plaintiff, and C. D. is defendant, pursuant to a rule of court [or “order of a judge,”] made in the said cause for that purpose.

(a) See R. H. 2 & 3 Geo. 4, 5 B. & Ald. 560, requiring this indorsement.

50. *Rule on Coroners to return Attachment in Q. B.*

[England.] On —, in — term, — Vict.
The Queen } It is ordered, that the coroner [or “coroners”]
 v. } of the city [or “county”] of — do, within four
The Sheriff of — } days [in *London or Middlesex*, or “eight days” in
 B. v. D. } any other county,] next after the notice of this rule
 to be given to him [or “them, or one of them”], peremptorily return this
 writ of attachment. By the Court.
 Side Bar.

[See 1 Chit. Ar. Pr. 410, 412.]

51. *The like, in C. P.*

In the Common Pleas.

[England.] On —, in — term, — Vict.
The Queen } It is ordered, that the coroner [or “coroners”]
 v. } of the county of —, within — days next after
The Sheriff of — } notice of this rule to be given to him [or “them”],
 B. v. D. } do peremptorily return the writ of attachment of
 contempt issued forth between the said parties.
 In the Treasury Chamber, at the instance of the plaintiff.
 By the Court.

52. *Attachment against Coroners, directed to Elisors in C. P.*

Victoria [&c. as ante, 170, No. 48]. To E. G. and E. H. elisors, appointed by our court of the bench in this behalf, greeting: We command you, that you attach C. C. esquire, coroner [or “C. C. and D. C. esquires, coroners”] of our county of —, so that you may have him [or “them”] before our justices at Westminster, on — [&c. conclude as in form ante, 170, No. 48.]

Indorse it thus:—In *Regina v. the Sheriff of —*, in the cause of B. v. D. for not bringing in the body of the said sheriff.
 [See 1 Chit. Ar. Pr. 410, 412.]

53. *Rule for Habeas Corpus to bring in the Body of Sheriff, in Q. B.*

[England.] On —, in — term, — Vict.
The Queen } Upon reading this writ of attachment, and the
 v. } return made thereto, it is ordered, that a writ of
The Sheriff of — } habeas corpus issue, directed to the coroner [or
 B. v. D. } “coroners”] of the county of —, commanding
 him [or “them”] to have the body of the defendant, the sheriff [or
 “bodies of the defendants, the sheriffs,”] before this court immediately,
 to undergo, &c. Upon the motion of Mr. —. By the Court.

[See 1 Chit. Ar. Pr. 410, 412.]

54. *Writ of Habeas Corpus thereon.*

Victoria [&c. as ante, 170, No. 48.] To the coroner [or “coroners”] of the county of —, greeting: We command you, that you have in our court before us at Westminster, on —, the body of S. S. esquire, sheriff [or “the bodies of S. S. and L. S. esquires, sheriffs”] of our county of —, to answer to us, for certain trespasses and contempts, brought

against them in our said court before us, and whereof by your return you have charged yourself [*or* "yourselves"]. Witness (*name of chief justice*) at Westminster, this — day of —, in the — year of our reign.

By the Court.

LUSHINGTON.

55. *Return of Fieri Feci.*

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named *C. D.* the damages [*or* "debt and damages"] within-mentioned, which I have ready before her majesty, [*or in C. P.* "before her majesty's justices," *or in Exch.* "before the barons of her majesty's Exchequer,"] at the time [*or* "day"] and place within mentioned, to be rendered to the said *A. B.* for his damages [*or* "debt and damages"] and interest aforesaid, [*or in Exch.* "to be paid to the said *A. B.* or his attorney,"] as within I am commanded.

The answer of S. S. esq. sheriff.

56. *Return of Mandavi Ballivo.*

By virtue of this writ to me directed, I made my mandate to the bailiff of the liberty of — in my county, to whom belongeth the execution and return of all writs and processes within the said liberty, and without whom no execution of this writ could be made by me within the same: which said bailiff hath returned to me, that by virtue of my said mandate to him thereupon directed as aforesaid, he hath caused to be made of the goods and chattels of the within-named *C. D.* the damages [*or* "debt and damages"] and interest within mentioned, and that he hath that money ready before our lady the queen, [*or in C. P.* "before the justices of our lady the queen," *or in Exch.* "before the barons of her majesty's Exchequer,"] at the day and place within-mentioned, as by my said mandate it was commanded.

The answer of S. S. esq. sheriff.

[*See 1 Chit. Ar. Pr. 412.*]

57. *Return of Fieri Feci for Part, and Nulla Bona as to Residue.*

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named *C. D.* to the value of £—; which said money I have ready before our lady the queen [*or in C. P.* "before the justices of our lady the queen," *or in the Exchequer*, "before the barons of her majesty's Exchequer,"] at the day and place within mentioned, to render [*or, in Exchequer*, "to be paid"] to the said *A. B.* in part satisfaction of his damages [*or* "debt and damages"] and interest within specified: And I further certify to our said lady the queen [*or in C. P.* "to the justices of our lady the queen of the bench," *or in Exchequer* "to the barons of her majesty's Exchequer,"] that the said *C. D.* hath no more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in my bailiwick, which I can seize or take, or pay or deliver to the said *A. B.*, or whereof I can cause to be made the residue of the said damages [*or* "debt and damages"] and interest, or any part thereof, as the within writ commands me.

The answer of S. S. esq. sheriff.

58. *Return of Fieri Feci for Part, and that Sheriff has paid part of Sum levied to the Landlord, for Rent, and retains for Poundage, &c.*

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named *C. D.* to the value of £——; part of which said sum of £—— I have paid to *L. L.*, the landlord of the premises on which the said goods and chattels were taken, for £—— rent due to him for the said premises at —— last, such sum not exceeding a year's rent of the said premises; and I have retained in my hands the sum of £—— for poundage, officers' fees, and expenses of the levy; and £——, the residue of the said sum of £——, I have ready before our lady the queen, [or in *C. P.* "before the justices of our lady the queen," or, in *Exchequer*, "before the barons of her majesty's Exchequer,"] to render to the said *A. B.* for part of his damages and interest within mentioned: And the said *C. D.* hath not any more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in my bailiwick, which I can seize or take, or pay or deliver to the said *A. B.*, or whereof I can cause to be made the residue of the said damages [or "debt and damages"] and interest, or any part thereof, as within I am commanded.

The answer of *S. S.* esq. sheriff.

[See 1 *Chit. Ar. Pr.* 423, 436.]

59. *The like, for Rent and Taxes; to be annexed to the Writ.*

I *S. S.* esq., sheriff of the county of ——, humbly certify and return, that by virtue of her majesty's writ, which is hereto annexed, I have caused to be made of the goods and chattels of *C. D.* in the said writ named in my bailiwick, the sum of £——; £——, part whereof, I have paid to *L. L.* of ——, the landlord of the premises whereon the goods and chattels were seized, for rent (not exceeding one year) due to the said landlord, in respect of the said premises on —— last; £——, further part thereof, I have paid for taxes (not exceeding one year) due from the said *C. D.* to her majesty; £——, further part thereof, I have retained for poundage, officers' fees, and expenses, &c. due to me on the levy; and £——, residue thereof, I have paid to *A. B.* in the said writ also named in part satisfaction of the damages [or "debt and damages"] and interest in the said writ mentioned (or if not already paid, see the next form): And I further certify and return that the said *C. D.* hath no more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in my bailiwick, whereof I can cause to be levied the residue of the said damages and interest, or any part thereof.

By the same sheriff.

(Make the following indorsement on the writ :) "The execution of this writ appears in the schedule hereunto annexed.

"The answer of *S. S.* esq. sheriff."

[See 1 *Chit. Ar. Pr.* 423, 436.]

60. *The like for Taxes only.*

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named *C. D.* to the value of £——; part of which said sum, to wit, £——, I have paid to *L. L.* for queen's taxes (not exceeding one year) due for and in respect of the said premises at the time of taking the said goods and chattels, and I have retained in my hands the sum of £——, for poundage, officers' fees, and expenses of the levy, and £——, the residue of the said sum of £——, I have ready before our said lady the queen [or in *C. P.* "before the justices of our lady the queen," or in *Exchequer* "before the barons of her majesty's

Exchequer,"] to render to the said *A. B.*, for part of his damages and interest within mentioned; and the said *C. D.* hath not any more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money in my bailiwick, which I can seize or take, or pay or deliver to the said *A. B.*, or whereof I can cause to be made the residue of the said damages and interest or any part thereof, as within I am commanded.

The answer of *S. S.* esq. sheriff.

61. *Return that the Goods taken were let to Defendant, and remain in Sheriff's hands for want of Buyers.*

By virtue of this writ to me directed, I have taken in execution the interest and property of the within-named *C. D.* of and in certain goods and chattels of *E. F.* now in a certain messuage and premises situate and being at —, in my bailiwick, subject to the right of *C. D.* to use and enjoy the same during a certain term, the said goods and chattels having, before the said writ was delivered to me to be executed, been demised and let by the said *E. F.* to the said *C. D.* for such term, which is still unexpired, and which said interest and property of the said *C. D.* of and in the said goods and chattels, being of the value of the damages [or "debt and damages"] and interest within mentioned [or "of the value of £—"], remains in my hands unsold, for want of buyers [*If the value returned be less than the amount of debt and interest ordered to be levied by the writ, proceed to return nulla bona for the residue, as in form, ante, 172, No. 57.*] Therefore I cannot have the money within-mentioned before our lady the queen, [or in *C. P.* "before the justices of our said lady the queen," or in *Exch.* "before the barons of her majesty's Exchequer,"] at the day and place within mentioned, as I am within commanded.

The answer of *S. S.* esq. sheriff.

62. *Return, that the Sheriff has taken Goods, which remain in his hands for want of Buyers.*

By virtue of this writ to me directed, I have taken goods and chattels of the within-named *C. D.* to the value of £—, [or "of the damages," or "debt and damages," and interest within mentioned]; which goods and chattels remain in my hands unsold, for want of buyers; therefore I cannot have that money before our lady the queen, [or in *C. P.* "before the justices of our lady the queen," or in *Exch.* "before the barons of her majesty's Exchequer,"] at the time [or "day"] and place within mentioned, as I am within commanded [*If the value returned be less than the amount of debt and interest ordered to be levied by the writ, proceed to return nulla bona for the residue, as in form, ante, 172, No. 57.*]

The answer of *S. S.* esq. sheriff.

63. *The like, where Part of the Goods have been sold, and the rest remain in hand, &c.*

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named *C. D.* to the value of £—, and have exposed them to sale from day to day, and have thereof sold to the value of £—; which money I have ready before our lady the queen, [or in *C. P.* "before the justices of our lady the queen," or in *Exch.* "before the barons of her majesty's Exchequer,"] at the day and place within mentioned, to be rendered [or in *Exch.* "to be paid"] to the within-named *A. B.* as within I am commanded; and the residue of the said goods and chattels remain in my hands unsold for want of buyers [*If the value returned be less than the amount of debt and interest ordered to be*

levied by the writ, proceed to return nulla bona for the residue, as in form, ante, 172, No. 57.] The answer of S. S. esq. sheriff.

64. *Return of Nulla Bona.*

The within-named C. D. has no goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in my bailiwick, which I can seize or take, or pay or deliver to the said A. B., or whereof I can cause to be made the damages [or "debt and damages"] and interest within mentioned, or any part thereof, according to the exigency of this writ.

The answer of S. S. esq. sheriff.

65. *The like, and that the Defendant is a Beneficed Clerk (a).*

The within-named C. D. has no goods or chattels, or any lay fee, or any money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in my bailiwick, which I can seize or take, or pay or deliver to the said A. B. or whereof I can cause to be made the damages [or "debt and damages"] and interest within mentioned, or any part thereof, as within I am commanded; but I do hereby certify, that the said C. D. is a beneficed clerk, to wit, rector of the rectory [or "vicar of the vicarage"] and parish church of — in my county; which said rectory [or "vicarage"] and parish church are within the diocese of the reverend father in God — by divine permission lord bishop of —, [or "within the peculiar jurisdiction of the very reverend the dean and chapter of the cathedral church of St. Peter of York, and instituted to try them as ordinary," as the case may be.]

The answer of S. S. esq. sheriff.

66. *Entry of Fieri Facias and Testatum, with Return of Nulla Bona as to Part on the Roll.*

[To the end of the entry of the judgment, and then thus:] Afterwards, that is to say, on the — day of —, the plaintiff comes here into court, by his attorney aforesaid, and prays the writ of the said lady the queen of fieri facias, to be directed to the sheriff of —, commanding him, that of the goods and chattels of the defendant in his bailiwick, he cause to be made the damages [or "debt and damages"] aforesaid, together with interest on the said sum of £—, at the rate of £4 per centum per annum, from the — day of — (b), A. D. —, on which day the judgment aforesaid was entered up; and it is granted to him returnable before our lady the queen [or in C. P. "before the justices of our lady the queen," or in *Exch.* "before the barons of our lady the queen,"] at Westminster, immediately after the execution thereof [or "on —"]; the same time [or "day"] is given to the plaintiff at the same place: And afterwards, to wit, on — [or "at which day"], before our said lady the queen [or in C. P. "before the said justices," or in *Exch.* "before the said barons,"] at Westminster, comes the plaintiff, by his attorney aforesaid; and the sheriff, to wit, S. S. sheriff of the county aforesaid, thereupon returns to our said lady the queen [or in C. P. "to the said justices," or in *Exch.* "to the said barons,"] at Westminster aforesaid, that the defendant hath not any goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his

(a) See the forms as to execution against clergymen, post, Book 3, Part

2, Chap. 12.

(b) See ante, 149, n. (a).

bailiwick, which he can seize or take, or pay or deliver to the said plaintiff or whereof he can cause to be made the damages [or "debt and damages"] and interest aforesaid, or any part thereof [*let this agree with the return, if any*]: whereupon, on the behalf of the plaintiff, it is sufficiently testified in the said court, that the defendant hath sufficient goods and chattels in the county of —, whereof the sheriff of that county may cause to be made the damages [or "debt and damages"] and interest aforesaid: And thereupon the plaintiff prays the writ of our said lady the queen of testatum fieri facias, to be directed to the sheriff of the said county of —, commanding him that of the goods and chattels of the defendant, in his bailiwick, he cause to be made the damages [or "debt and damages"] and interest aforesaid; and it is granted to him returnable before our said lady the queen [or in *C. P.* "before the said justices," or in *Exch.* "before the said barons"] at Westminster, immediately after the execution thereof [or "on —"]; the same time [or "day"] is given to the plaintiff at the same place: And afterwards, to wit, on — [or "at which day"] before our said lady the queen [or in *C. P.* "the said justices," or in *Exch.* "the said barons,"] at Westminster, comes the plaintiff, by his attorney aforesaid; and our said sheriff of — thereupon returns to our said lady the queen [or in *C. P.* "to the said justices," or in *Exch.* "to the said barons,"] at Westminster aforesaid, that he hath caused to be made of the goods and chattels of the said defendant in his bailiwick, the sum of £—, which money he has paid to the plaintiff, in part satisfaction of the damages [or "debt and damages"] and interest aforesaid; and that the defendant hath not any other or more goods or chattels, money, bank-notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, which he can seize or take, or pay or deliver to the said *A. B.*, or whereof he can cause to be made the residue of the damages [or "debt and damages"] and interest aforesaid, or any part thereof [*let this agree with the return*].

67. *Entry of Fieri Facias on the Roll, with a Return of Nulla Bona, and Award of another Fi. Fa.*

[*To the end of the entry of the judgment, and then thus:*] Afterwards, to wit, on the — day of —, the plaintiff comes here into court, by his attorney aforesaid, and prays the writ of the said lady the queen of fieri facias, to be directed to the sheriff of —, commanding him, that of the goods and chattels of the defendant, in his bailiwick, he cause to be made the damages [or "debt and damages"] aforesaid, together with interest on the said sum of £—, at the rate of £4 per centum per annum, from the — day of — (*a*), on which day the judgment aforesaid was entered up: and it is granted to him returnable before our said lady the queen, [or in *C. P.* "before the justices of our said lady the queen," or in *Exch.* "before the barons of our said lady the queen,"] at Westminster, immediately after the execution thereof [or "on —"]; the same time [or "day"] is given to the plaintiff, at the same place: And afterwards, to wit, on —, [or "at which day,"] before our said lady the queen, [or in *C. P.* "before the said justices," or in *Exch.* "before the said barons,"] at Westminster, comes the plaintiff by his attorney aforesaid; and the sheriff, to wit, S. S. sheriff of the said county, thereupon returns to our said lady the queen, [or in *C. P.* "to the said justices," or in *Exch.* "to the said barons,"] at Westminster aforesaid, that the defendant hath not any goods or chattels, money, bank notes, cheques, bills of exchange,

(*a*) See *ante*, 149, n. (*a*).

promissory notes, bonds, specialties, or other securities for money, in his bailiwick, which he can seize or take, or pay or deliver to the said *A. B.*, or whereof he can cause to be made the damages [*or "debt and damages"*] and interest aforesaid, or any part thereof [*let this agree with the return*]: And hereupon the plaintiff prays another writ of our said lady the queen of fieri facias, to be directed to the said sheriff of —, commanding him in form aforesaid; and it is granted to him, returnable before our said lady the queen [*or in C. P. "before the said justices," or in Erch. "before the said barons,"* at Westminster, immediately after the execution thereof, [*or "on —"*]; the same time [*or "day"*] is given to the plaintiff at the same place.

68. *Entry of Fieri Facias and Return of Nulla Bona, and Award of Capias ad Satisfaciendum.*

[*To the end of the entry of the judgment, and then thus:*] Afterwards, to wit, on the — day of —, the plaintiff comes here into court, by his attorney aforesaid, and prays the writ of our lady the queen of fieri facias to be directed to the sheriff of —, commanding him [*&c. as in the preceding form.*] And afterwards, to wit, on —, [*or "at which day"*] before our said lady the queen, [*or in C. P. "before the justices of our lady the queen," or in Erch. "before the barons of our lady the queen,"*] at Westminster, comes the plaintiff by his attorney aforesaid; and the sheriff, to wit, S. S. sheriff of the county aforesaid, thereupon returns to our said lady the queen, [*or in C. P. "to the said justices," or in Erch. "to the said barons,"*] at Westminster aforesaid, that the defendant hath not any goods or chattels [*&c. as in the preceding form.*] And hereupon the plaintiff prays the writ of our said lady the queen of capias ad satisfaciendum, to be directed to the said sheriff of —, commanding him that he take the defendant, if he be found in his bailiwick, and him safely keep, so that he may have his body before our said lady the queen, [*or in C. P. "before the said justices," or in Erch. "before the said barons,"*] at Westminster, immediately after the execution thereof [*or "on —"*], to satisfy the plaintiff the damages [*or "debt and damages"*] and interest aforesaid, and it is granted to him &c.; the same time [*or "day"*] is given to the defendant, at the same place.

69. *Entry of Venditioni Exponas and Return, and Award of Fieri Facias for the Residue.*

[*Proceed as in the form, ante, 175, No. 67, to the asterisk*, and then thus:*] And afterwards, to wit, on —, [*or "at which day,"*] before our said lady the queen, at Westminster, comes [*or in C. P. or Erch. "at which day comes here,"*] the plaintiff in his proper person; and the sheriff, to wit, S. S., esquire, sheriff of the said county of — returns, that by virtue of the writ of our said lady the queen to him thereupon directed, he hath taken goods and chattels of the defendant to the value of £—, which remain in the hands of the said sheriff unsold, for want of buyers; wherefore he cannot have the said money before our said lady the queen at Westminster, [*or in C. P. "before the said justices," or in Erch. "before the said barons,"*] on the day aforesaid; and that the defendant hath no other goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, which he can seize or take, or pay or deliver to the said *A. B.*, or whereof he can cause to be made any more of the money in the said writ mentioned [*let this agree with the return*]. Therefore the sheriff is commanded, that he expose to sale the goods and

chattels aforesaid, by him in form aforesaid taken; and that he have the money arising from such sale before our said lady the queen at Westminster, [or in *C. P.* "before the justices here," or in *Exch.* "before the barons here,"] immediately after the execution thereof, [or "on —,"] to be rendered to the said plaintiff [&c. as in the preceding form.] The said sheriff is also commanded, that of the goods and chattels of the defendant in his bailiwick, he cause to be levied £——, residue of the damages [or "debt and damages,"] and interest aforesaid; and that he have that money before our said lady the queen at Westminster, [or in *C. P.* "before the said justices here," or in *Exch.* "before the said barons here,"] at the time [or "on the day,"] aforesaid, to be rendered to the plaintiff for his damages and interest aforesaid; the same time [or "day"] is given to the plaintiff at the same place.

70. *Bill of Sale from Sheriff, of Goods taken on a Fieri Facias.*

To all to whom these presents shall come. I, S. S. esq. sheriff of the county of —, send greeting: Whereas by virtue of her majesty's writ of fieri facias, issued out of her majesty's Court of Queen's Bench, [or "Common Pleas," or "Exchequer of Pleas,"] at Westminster, to me directed and delivered, for levying £—— on the goods and chattels of C. D., which A. B. in the said court hath recovered against him, together with interest on the said sum of £——, at the rate of £4 per centum per annum, from the — day of —, A.D. —, [as in writ,] as by the said writ may more at large appear, I have taken into my hands the several goods and chattels of the said C. D. hereafter mentioned, that is to say, [here set them out,] which by good and lawful men have been valued and appraised at £——. Now know ye, that I, the said S. S., by virtue of the said warrant and my office, and for and in consideration of the sum of £—— of lawful money of Great Britain to me in hand paid by the said A. B., do hereby, as much as in me lieth, by virtue of my said office, fully and absolutely bargain, sell, and deliver to the said A. B., his executors, administrators and assigns, the said goods and chattels, to have, hold, and enjoy the same, as his, her, and their own proper goods and chattels, for ever, in part satisfaction of the said sum of £——. In witness whereof I have hereunto set my hand and seal the — day of —, A.D. —.

Signed, sealed, and delivered in }
the presence of me, IV. W. }
of —.

S. S.

[Sec 1 Chit. Ar. Pr. 418, 422, 423.]

71. *Condition of Bond, to indemnify Sheriff for selling under a Fieri Facias.*

Whereas the above-named S. S., as sheriff of the county of —, by virtue of her majesty's writ of fieri facias to him directed, against the goods and chattels of C. D. issued at the suit of A. B. out of her majesty's Court of Queen's Bench (or "Common Pleas," or "Exchequer,"] at Westminster, and there returnable on —, and whereby he was to cause to be made of the goods and chattels of C. D. the sum of £——, hath seized and taken divers goods and chattels, as the proper goods and chattels of the said C. D. in execution; and whereas, since the seizing and taking of the said goods and chattels in execution as aforesaid, the said goods and chattels, and each and every part thereof, have been claimed by one C. C., who hath given notice to the said sheriff not to pro-

ceed to a sale of the said goods and chattels, or to pay over the money arising from the sale thereof, to the said *A. B.*: and whereas the said *A. B.* hath applied to the said sheriff, and requested him to sell the said goods and chattels so seized as aforesaid, under and by virtue of the said writ of fieri facias, notwithstanding such claim and notice, and to pay to the said *A. B.* the money arising from the sale thereof, in satisfaction of the said sum of money directed to be levied by the said writ of fieri facias, which the said *S. S.* has consented to do upon being indemnified for so doing. Now the condition of the above-written obligation is such, that if the above-bounden *A. B.*, his heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, well and sufficiently save harmless and keep indemnified the said sheriff, his under-sheriff, deputy and officers, and each and every of them, of, from, and against all losses, costs, charges, damages, and expenses, which he or they shall or may sustain, suffer, bear, pay, expend, or be put unto, for or by reason or means of seizing or selling the said goods and chattels so seized and taken in execution as aforesaid, or paying unto the said *A. B.* the money arising from the sale thereof, in satisfaction of the said sum of £——, so directed to be levied by the said writ of fieri facias; and also of, from, and against all action and actions, suit and suits, or any proceeding or proceedings at law or equity, which now are, or shall or may at any time or times hereafter be brought, commenced, or prosecuted, rightfully or wrongfully, against the said sheriff, his under-sheriff, deputy, and officers, or any or either of them, for or on account, or by reason or means of the seizing or selling the said goods and chattels under the said writ of fieri facias, or paying unto the said *A. B.* the money arising from the sale thereof as aforesaid, or for or by reason or means of any other act, matter, cause or thing, whatsoever, relating thereto, or to the execution of the said writ of fieri facias, then the above-written obligation to be void, otherwise to stand and remain in full force, vigour, and effect.

A. B.

Signed, sealed, and delivered, in the
presence of me, *W. W.* of ——.

[See 1 Chit. Ar. Pr. 423.]

72. Condition of a Bond of Indemnity to Sheriff for abandoning Goods and returning Nulla Bona.

Whereas the above-named sheriff, by virtue of her majesty's writ of fieri facias to him directed against the goods and chattels of *C. D.*, issued out of her majesty's court of Queen's Bench, [or "*C. P.*" or "*Exchequer*,"] at Westminster, and there returnable on ——, at the suit of one *A. B.*, hath seized and taken divers goods and chattels of the said *C. D.* in execution. And whereas he the above-bounden *C. C.* hath given notice to the said sheriff, and claimed the said goods and chattels, and hath requested the said sheriff to quit possession of and abandon and deliver to the said *C. C.* the said goods and chattels so seized as aforesaid, and to make his return to the court when called on so to do, that the said *C. D.* had not any goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, [if there were other goods state according to the fact,] which the said sheriff has consented to do on the said *C. C.* indemnifying him the said sheriff for so doing. Now the condition of the above-written obligation is such, that if the above-bounden *C. C.*, his heirs, executors, and administrators, do and shall, from time to time and at all times hereafter, well and sufficiently save harmless and keep indemnified the

same sheriff, his under-sheriff, deputy, or officers, and each and every of them, of and from and against all losses, costs, charges, damages and expenses, which he or they shall or may sustain, suffer, bear, pay, expend, or be put to for or by reason or means of quitting possession of, abandoning and delivering to the said C. C. the said goods and chattels so seized as aforesaid, and making the return aforesaid; and also of, from, and against all action and actions, suit and suits, proceeding or proceedings, either at law or equity, which now are or shall or may at any time or times hereafter be brought, commenced, or prosecuted, rightfully or wrongfully, by the said A. B., or by any person or persons whomsoever, against the said sheriff, his under-sheriff, deputy, and officers, or any or either of them, for or on account or by reason or by means of the quitting possession of, abandoning, and delivering to the said C. C. the said goods and chattels, and making the return aforesaid, or for or by reason or means of any other act, matter, cause, or thing whatsoever relating thereto, or to the execution or return of the said writ of fieri facias, then the said obligation to be void, otherwise to stand and remain in full force, vigour, and effect.

C. C.

Signed, sealed, and delivered, in the
presence of me, W. W. of —.

[See 1 Chit. Ar. Pr. 423.]

73. *Proceedings by Sheriff, &c. in the case of Adverse Claims.*

[See the forms post, Book 4, Part 1, Chap. 11.]

II. ELEGIT.

1. *Elegit in Q. B. or C. P.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting (a): Whereas A. B. lately in our court before us [or in C. P. "before our justices of the bench"] at Westminster, by the judgment of the same court, recovered against C. D. £ —, which in our said court before us [or, in C. P. "before our said justices,"] were adjudged to the said A. B. for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings then lately made by the said C. D. to the said A. B., [or if in debt "recovered against C. D. a certain debt of £ —, and also £ —, which in our same court were adjudged to the said A. B. for his damages which he had sustained, as well on occasion of the detention of the said debt," or as the form of action was set out in judgment, see forms, ante, 102, et seq.] as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record, [or in C. P. omit "as appears to us of record"]; and afterwards the said A. B. came into our said court before us, [or in C. P. "before our said justices,"] and, according to the form of the statutes in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him was seised or possessed of on the — day of —, in the year of our Lord —, on which day the judgment aforesaid was en-

(a) See forms of directions of writs, ante, 20 n. (a).

tered up, or at any time afterwards, or over which the said *C. D.* on the said — of — (*the day on which the judgment was entered up*), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, according to the form of the said statutes, until the damages [*or in debt* “debt and damages”] aforesaid, together with interest upon the said sum of £ —, at the rate of four pounds per centum per annum, from the — day of —, in the year of our Lord — [*the day on which the judgment was entered up, or in case the judgment was entered up prior to the 1st of October, 1838, say, “from the first day of October, in the year of our Lord 1838,”*] shall have been levied*. Therefore we command you that, without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said — day of — (*the day on which the judgment was entered up*) or at any time afterwards, or over which the said *C. D.* on the said — day of — (*the day on which the judgment was entered up*) or at any time afterwards had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages [*or in debt* “debt and damages”] aforesaid, together with interest as aforesaid, shall have been levied†. And in what manner you shall have executed this our writ make appear to us [*or in C. P. “before our justices”*] at Westminster, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then [*or in C. P. omit the word “then”*] this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

2. *The like in Exchequer (a).*

Victoria, [*&c. as ante, 180, No. 1,*] to the sheriff of —, greeting: Whereas *A. B.* in our court before the barons of our Exchequer at Westminster, on the — day of —, A.D. — [*day of signing judgment*], by the consideration and judgment of the same court, recovered against *C. D.* £ —, which in our said court were adjudged [*&c. as in the preceding form,*] whereof the said *C. D.* is convicted, as by inspecting the rolls of our said Exchequer appears to us; and afterwards the said *A. B.* came into our court, before the barons of our said Exchequer, at Westminster aforesaid, and, according to the form of the statutes in such case made and provided, chose to be delivered to him [*&c. as in the preceding form to the dagger †, and then thus:*] and in what manner you shall have executed this our writ make appear to the barons of our said Exchequer at Westminster, immediately after the execution thereof, under your seal

(a) The writ in this court may, it should seem, contain a non omittas clause.

and the seals of those by whose oath you shall make the said extent and appraisement, [or "on —,"] and have there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as a *fi. fa.* as directed, ante, 149, but you may omit that part of the indorsement relative to the defendant's addition and place of abode.]

3. *The like, in a County Palatine.*(a)

Victoria, [*&c. as ante*, 180, No. 1,] to the Chancellor [*&c. as ante*, 161, No. 29.] Whereas *A. B.*, lately in our court [*&c. stating the judgment as in the preceding forms, according to the court in which it was obtained,*] and afterwards the said *A. B.* came into our said court before us [or in *C. P.* "before our justices of the bench," or in *Exchequer*, "before the barons of our Exchequer,"] at Westminster aforesaid, and, according to the form of the statutes in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.*, in the said county palatine, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in the said county palatine, as the said *C. D.* or any person in trust for him, was seised or possessed of on the — day of —, A.D. —, on which day the judgment aforesaid was entered up [*&c. as in the form, ante*, 180, No. 1, to the asterisk *, and then proceed as follows:] therefore we command you, that by our writ under the seal of our said county palatine, to be duly made and directed to the sheriff of the same county, you command the said sheriff, that without delay he cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in his bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, [*&c. as in the form ante*, 181, No. 1,] in the said county palatine, as the said *C. D.* or any person in trust for him [*&c. as in the form, ante*, 181, No. 1, to the dagger †,] and in what manner he shall have executed the said last-mentioned writ make appear to us, [or in *C. P.* "to our said justices," or in *Exchequer*, "to our said barons,"] at Westminster, immediately after the execution thereof, [or on —,"] under his seal, and the seals of those by whose oath he shall make the said extent and appraisement; and have you there then [or in *C. P.* or *Exchequer*, omit the word "then,"] this writ. Witness —, (name of chief justice or chief baron,) at Westminster, the — day of —, in the year of our Lord —

[Indorse it as a *fi. fa.* as directed, ante, 149, but you may omit that part of the indorsement relative to defendant's addition and place of abode.]

4. *Mandate to the Sheriff of a County Palatine, in pursuance of an Elegit.*

Victoria, [*&c. as above*,] to the sheriff of Lancaster [or Durham(a)], greeting: We command you, [*&c. as in the above writ of elegit to the teste, commanding the sheriff in the second person to do what is required by the writ.*] Witness, ourself, at Lancaster [or Durham (a)], the — day of — in the — year of our reign.

(a) See, as to Durham, page 21, n. (b).

5. *Non omittas Elegit.*

Victoria, [*&c. as ante, 180, No. 1,*] to the sheriff of —, greeting :
Whereas *A. B.* lately in our court [*&c. as the form, ante, 180, No. 1, to the asterisk *, and then thus :*] therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay cause to be delivered [*&c. conclude as in the preceding forms, ante, 180, 181, Nos. 1, 2.*]

6. *Return to Elegit, that Defendant has no Goods or Lands, &c.*

The within-named defendant has no goods or chattels, nor any lands, tenements, rectories, tithes, rents, or hereditaments, in my bailiwick, whereof I can cause to be levied the damages [*or "debt and damages,"*] and interest, within mentioned, or any part thereof, as within I am commanded.

The answer of S. S. sheriff.

7. *Return of Inquisition, where lands are extended.*

The execution of this writ appears in the inquisition hereunto annexed.

The answer of S. S. sheriff.

— to wit. An inquisition indented, taken at —, in the county of —, the — day of —, in the — year of the reign of our sovereign lady Victoria, before me S. S., sheriff of the county aforesaid, by virtue of her majesty's writ to me directed in this behalf and to this inquisition annexed, by the oath of [*name the jurors upon the inquest*] twelve honest and lawful men of the county aforesaid; who being sworn and charged, say upon their oath that *C. D.* named in the said writ to this inquisition hereunto annexed, on the day of taking this inquisition [*if there be no goods or chattels, say, "had no goods or chattels in my bailiwick to the knowledge of the said jurors," otherwise, say*] was possessed of the goods and chattels following, to wit [*set out the goods*] of the price of £—, as of his own proper goods and chattels; which said goods and chattels I the said sheriff have caused to be delivered to the said *A. B.*, to hold to him the said goods and chattels, as his own proper goods and chattels, in part satisfaction of his damages [*or "debt and damages,"*] and interest in the said writ mentioned, as by the said writ I am commanded: And the jurors aforesaid, upon their oath aforesaid, do further say, that the said *C. D.* on the — day of —, in the year of our Lord —, being the day on which the judgment in the said writ mentioned was obtained, was seised in his demeane as of fee of and in one messuage [*&c. describe the lands, &c. by metes and bounds, and state the place and county in which they lie, the estate the defendant had in them, and whether seised in severalty, or as joint tenant or tenant in common, see form, No. 8, post, 184, adding after each messuage or parcel of land the value thus :*] and being of the clear yearly value of £—, in all issues, beyond reprises [*and if the premises are mortgaged, say, "which said premises are subject to a mortgage made thereof by the said C. D. to one E. F. of —, by indenture bearing date (&c.) for the term of — years at the yearly rent of £—, subject to redemption on payment of £— and interest at the rate of £5 per centum per annum, at a day since past*]: which said premises [*subject as aforesaid*] I the said sheriff, on the aforesaid day of taking this inquisition, have caused to be delivered to the said *A. B.* by a reasonable price and extent; to hold to him and his assigns, according to the nature and tenure thereof, according to the form of the statutes in such case made and provided,

until the said damages [or "debt and damages, &c."] in the said writ mentioned, together with such interest as therein also mentioned, shall be thereof levied, as by the said writ it is commanded: And the jurors aforesaid, upon their oath aforesaid, do further say, that the said *C. D.*, on the day of taking this inquisition aforesaid, had not any other or more goods or chattels in my bailiwick; nor had he, or any person or persons in trust for him, on the — day of —, in the year of our Lord — [the day on which the judgment was signed], or at any time afterwards, any other or more lands, tenements, rectories, tithes, rents, or hereditaments, in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I the said sheriff, as the jurors aforesaid, have set our seals to this inquisition, on the day and year and at the place first aforesaid.

[See 1 Chit. Ar. Pr. 445.]

8. *The like, where the Defendant has no Goods, but Lands holden in Joint Tenancy are extended.*

— to wit. An inquisition indented [&c. as in the preceding form to the words "sworn and charged," and then thus:] say upon their oath, that *C. D.* named in the said writ hereunto annexed, on the day of taking this inquisition, had no goods or chattels in my bailiwick, to the knowledge of the said jurors: And the jurors aforesaid, upon their oath aforesaid, further say, that the said *C. D.* on the — day of —, in the year of our Lord —, on which day the judgment in the said writ mentioned was obtained, was seised in his demesne as of fee, of and in one undivided moiety (the whole into two equal moieties to be divided) of and in one messuage [&c. describe the whole of the premises, as directed in the preceding form.] And I, the said sheriff, on the aforesaid day of taking the said inquisition, have caused to be delivered to the said *A. B.*, in the said writ named, by a reasonable price and extent, one undivided moiety (the whole into two equal moieties to be divided) of the said messuage [&c. describe the moiety of the premises], to hold to him and his assigns, according to the nature and tenure thereof, according to the form of the statutes in such case made and provided, until he shall have thereof fully levied the damages [or "debt and damages"] and interest in the said writ specified, as by the said writ it is commanded. In witness [&c. conclude as in the preceding form.]

9. *Award of Elegit on the Roll, and Return of Inquisition thereon.*

[To the end of the entry of the judgment, and then thus:] Afterwards, that is to say, on —, before the said lady the queen at Westminster, comes [or in *C. P.* or *Exchequer*, "Afterwards, that is to say, on — comes here"] the plaintiff by his attorney aforesaid, and, according to the form of the statute in such case made and provided, chooses to be delivered to him all the goods and chattels of the defendant, except his oxen and beasts of the plough, and also a moiety of all the lands and tenements [&c. as in form, ante, 180, No. 1, to the asterisk*], and he prays the writ of our said lady the queen thereupon, to be directed to the sheriff of —, and it is granted to him, &c. returnable before the said lady the queen at Westminster, [or in the *C. P.* or *Exchequer*, "returnable here"] immediately after the execution thereof [or "on —"]; the same time [or "day"] is given to the plaintiff there [or in the *C. P.* or *Exchequer*, "here"] &c. And afterwards, to wit, on — [or "at which day"], before the said lady the queen [or in *C. P.* "before the justices of the

bench," or *Erchequer*, "before the barons of the Exchequer"] at Westminster, comes [or in the *C. P.* or *Erchequer*, "comes here"] the plaintiff by his attorney aforesaid; and the sheriff, to wit, S. S. esq. sheriff of the said county aforesaid, now here returns the writ aforesaid to him in form aforesaid directed, in all things served and executed, together with a certain inquisition to the said writ annexed, taken before the said sheriff in the premises by virtue of the said writ; which said inquisition follows in these words; that is to say, —, to wit. An inquisition [&c. copy the inquisition.]

10. *Testatum Elegit (a).*

Victoria [&c. as ante, 180, No. 1,] to the sheriff of —, greeting: Whereas A. B. lately in our court [&c. stating the judgment as in the form, ante, 180, 181, Nos. 1, 2, according to the court in which it is recovered.] And afterwards the said A. B. came into our said court before us [or in *C. P.* "before our said justices," or in *Erchequer* "before our said barons,"] at Westminster aforesaid, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. except his oxen and beasts of the plough, and also [&c. proceed as in the form, ante, 180, 181, Nos. 1, 2, to the asterisk*, and then thus:] therefore by our writ we lately commanded the said sheriff of —, that without delay he should cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in his bailiwick, except his oxen and beasts of the plough, and also [&c. as in the form, ante, 180, No. 1, to the dagger†, mentioning the sheriff in the third person, and then thus:] and in what manner he should have executed that our writ, he should make appear to us [or in *C. P.* "to our justices," or in *Erch.* "to our barons,"] at Westminster, immediately after the execution thereof [or "on —"], under his seal, and the seals of those by whose oath he should have made the extent and appraisement: And our said sheriff of —, on — [or "at that day"], returned to us, [or in *C. P.* "to our said justices," or in *Erch.* "to our said barons,"] at Westminster aforesaid, that the said C. D. had no goods or chattels, nor any lands or tenements, rectories, tithes, rents, or hereditaments, in his bailiwick, whereof he could cause to be levied the damages [or "debt and damages"] and interest aforesaid, or any part thereof. Whereupon, on the behalf of the said A. B. it is testified in our said court, that the said C. D. hath divers goods and chattels, and also divers lands, tenements, rectories, tithes, rents, and hereditaments, in your bailiwick, whereof you may cause to be levied the said damages [or "debt and damages"] and interest as aforesaid: And the said A. B. hereupon comes into our said court, and, according to the form of the statutes in such case made and provided, chooses to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the — day of —, in the year of our Lord —, on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said C. D. on the said — day of — [day on which judgment was entered up], or at any

(a) A testatum writ is unnecessary. An elegit may be awarded into a different county from that in which the

venue is laid without a testatum clause; 1 Chit. Ar. Pr. 444.

time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, according to the form of the said statutes, until the damages [or, in debt, "debt and damages"] aforesaid, together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, [the day on which the judgment was entered up, or in case the judgment was entered up prior to the 1st October, 1838, say, "from the 1st day of October, A.D. 1838,"] A.D. ——, shall have been levied. Therefore we command you, that without delay you cause to be delivered [&c. as in the form, ante, 180, No. 1, to the dagger†, and then thus:] And in what manner you shall have executed this our writ make appear to us [or in C. P. "to our said justices," or in Exchequer, "to our said barons,"] at Westminster, immediately after the execution hereof [or "on ——"] under your seal, and the seals of those by whose oath you shall make the said extent and appraisement; and have there then [or in C. P. or Exch. omit the word "then"] this writ. Witness —— (name of chief justice or chief baron) at Westminster, the —— day of ——, in the year of our Lord ——.

[Indorse it as a fi. fa. as directed, ante, 149, No. 1.]

11. *Award of several Writs of Elegit into different Counties, and on Sheriffs not executing them, award of other Writs.*

And hereupon the plaintiff, according to the form of the statute in such case made and provided, chooses to be delivered to him all the goods and chattels of the defendant, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in the counties of Y. and L. as the said C. D., or any person in trust for him, was seised or possessed of on the —— day of ——, in the year of our Lord ——, on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said C. D. on the said —— day of —— [day on which judgment was entered up], or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, according to the form of the said statutes, until the damages [or, in debt, "debt and damages"] aforesaid, together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, [the day on which the judgment was entered up, or in case the judgment was entered up prior to the 1st October, 1838, say, "from the 1st day of October, A.D. 1838,"] A.D. ——, shall have been levied: And the plaintiff prays the several writs of the lady the queen thereupon, to be directed to the sheriffs of Y. and L. severally, in form aforesaid; and they are granted to him, returnable before the said lady the queen at Westminster, [or in C. P. "before the justices here," or in Exchequer, "before the barons here,"] immediately after the execution hereof [or "on ——"]; the same time [or "day"] is given to the plaintiff at the same place [or in C. P. or Exchequer, "here," &c.] And afterwards, to wit, on —— [or "at which day,"] before the said lady the queen at Westminster, comes [or in C. P. or Exch. "comes here"] the plaintiff in his proper person; and the sheriffs of Y. and L. aforesaid did not send the several writs afore-

said to them thereupon severally directed, nor did either of them send the writ aforesaid to him thereupon directed, nor do any thing thereupon : Therefore, as before, the plaintiff prays the several other writs of the said lady the queen, to be directed to the sheriffs of Y. and L. aforesaid severally, in form aforesaid, and they are granted to him, returnable [&c. as *supra*]; the same time [or "day"] is given to the plaintiff at the same place [or in C. P. or Exchequer, "here," &c.]

[See 1 Chit. Ar. Pr. 444.]

12. Award of Re-elegit.

Afterwards, that is to say, on —, (*the teste of the second writ,*) before the lady the queen at Westminster, comes [or in C. P. or Exchequer, "at which day comes here"] the plaintiff by his attorney aforesaid, and gives the court here to understand and be informed, that the defendant on the — day of —, in the — year of the reign of our said lady the queen (being the day on which the judgment aforesaid was given), had, and still hath, divers other lands, tenements, rectories, tithes, rents, and hereditaments, in the said county, besides those which are mentioned in the return to the said writ; which said other lands, tenements, rectories, tithes, rents, and hereditaments, the defendant ought also to have in execution for the more speedy recovery of his damages [or "debt and damages"] and interest aforesaid: and the plaintiff humbly prays and chooses the same to be delivered to him accordingly, to hold to him and his assigns, according to the nature and tenure thereof respectively, according to the form of the said statutes, until the damages [or "debt and damages"] and interest aforesaid shall be thereof fully levied; and he prays the writ of the said lady the queen thereupon, to be directed to the sheriff of the said county of —, and it is granted to him, returnable before the said lady the queen at Westminster, [or in C. P. "before the justices here," or in Exchequer, before the barons here,"] immediately after the execution thereof [or "on —"]; the same time [or "day"] is given to the plaintiff at the same place [or in C. P. or Exchequer, here," &c.]

[See 1 Chit. Ar. Pr. 446.]

13. Writ of Re-elegit.

Victoria, [&c. as ante, 180, No. 1,] to the sheriff of —, greeting : Whereas A. B. lately in our court [&c. recite the first writ:] And you on — [or "on that day"] returned to us [or in C. P. "to our said justices," or in Exch. "to the barons of our said Exchequer"], at Westminster, a certain inquisition, indented, taken before you at —, on the — day of — last past, by the oath [&c. as ante, 183, No. 7,] whereby it is found [&c. reciting the return in the past tense:] And because we are now given to understand in our said court, that the said C. D. at the time of giving the judgment aforesaid, and afterwards, had and still hath divers other lands, tenements, rectories, tithes, rents, and hereditaments in your bailiwick, besides those which are mentioned in the return above set forth, which said other lands, tenements, rectories, tithes, rents, and hereditaments the said A. B. ought also to have in execution, for the more speedy recovery of his damages [or "debt and damages"] and interest aforesaid: therefore the said A. B. hath humbly besought us, that he may so have them, according to due course of law: Therefore we command you, that you cause to be delivered to the said A. B. in the presence of the said C. D. to be warned on that occasion, if he will attend, all the

other lands, tenements, rectories, tithes, rents, and hereditaments of the said *C. D.* in your bailiwick, as well as those before extended in execution, for the payment of the damages [*or "debt and damages"*] and interest aforesaid; to hold to the said *A. B.* and his assigns, according to the nature and tenure thereof, according to the form of the statutes aforesaid, until the damages [*or "debt and damages"*] and interest aforesaid shall be thereof fully levied: And in what manner you shall have executed this our writ [*&c. conclude as in form, ante, 180, No. 1, in Q. B. or C. P., or as ante, 181, No. 2, in Exchequer.*]

[*See 1 Chit. Ar. Pr. 446.*]

14. *Entry of quashing Inquisition, for Defects therein, and Award of new Writ of Elegit.*

Afterwards, that is to say, on —, (*the teste of the second writ*) before the said lady the queen at Westminster, comes [*or in C. P. or in Exch. "at which day comes here,"*] the plaintiff by his attorney aforesaid, and shows to the court here, that the inquisition aforesaid, by the said sheriff in form aforesaid taken and returned upon the said writ of elegit, is uncertain, insufficient, and bad in law, in this, to wit, [that the premises therein stated to be delivered by the said sheriff to the plaintiff as a true and equal moiety of all and singular the lands and tenements of the defendant in the county of — aforesaid, are not in and by the said inquisition set out by metes and bounds, nor otherwise described with convenient certainty, so that the plaintiff could have and hold the said moiety as his freehold, to him and his assigns, according to the form of the writ aforesaid (*a*).] Therefore the plaintiff prays, that for the defect aforesaid, as well the said writ of elegit as the inquisition aforesaid, in form aforesaid taken and returned, be vacated, annulled, and altogether holden for nothing; and that another writ of the said lady the queen may be issued, and directed to the sheriff of the county aforesaid: And thereupon the aforesaid writ and return being seen, and by the court here fully understood, it appears to the said court here, that the allegation aforesaid of the plaintiff is true, and that the inquisition aforesaid is uncertain, insufficient, and bad in law: Therefore it is considered, that as well the aforesaid writ of elegit, as the inquisition aforesaid, by the said sheriff, by virtue of the said writ, in form aforesaid taken and returned, be vacated, annulled, and altogether holden for nothing: And thereupon the plaintiff by his attorney aforesaid, according to the form of the statute in such case made and provided, chooses, as before, to be delivered to him all the goods and chattels [*&c. conclude as ante, 184, No. 9.*]

[*See 1 Chit. Ar. Pr. 446.*]

15. *Entry of Award of Fieri Facias and Levy of Part, and Award of Elegit for the Residue.*

[*To the end of the entry of the judgment, and then thus:*] Afterwards, that is to say, on —, (*teste of the fieri facias,*) before the said lady the queen at Westminster, comes [*or in C. P. or Exchequer, "at which day comes here"*] the plaintiff by his attorney aforesaid, and prays the writ of the said lady the queen of *fieri facias*, to be directed to the sheriff of —, commanding him, that of the goods and chattels of the defendant in his bailiwick, he cause to be made the damages [*or "debt and damages"*] aforesaid, together with interest [*&c. as in the fi. fa. to the words*]

(*a*) This objection is given merely as an example.

"entered up"] : and it is granted to him, returnable before the said lady the queen at Westminster, [or in C. P. "before the justices here," or in Exch. "before the barons here,"] immediately after the execution hereof [or "on —"]; the same time [or "day"] is given to the plaintiff at the same place [or in C. P. or in Exch. "here" &c.] : And afterwards, to wit, on — [or "at which day"] before the said lady the queen at Westminster, comes [or in C. P. or Exch. "comes here"] the plaintiff by his attorney aforesaid; and the sheriff, to wit, S. S. esquire, sheriff of the county of — aforesaid, now here returns to the said lady the queen at Westminster, [or in C. P. "to the said justices here," or in Exch. "to the barons here,"] that by virtue of the said writ to him directed, he has caused to be made of the goods and chattels of the defendant in his bailiwick £——, parcel of the damages [or "debt and damages"] and interest aforesaid: which money he has ready at the day and place in the said writ contained, to render to the plaintiff for so much of his damages [or "debt and damages"] and interest aforesaid, as by the said writ he is commanded; and that the defendant has not any other or more goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, whereof he can cause to be made the residue of the damages [or "debt and damages"] and interest aforesaid, or any part thereof: And for having execution of the said residue of the said damages [or "debt and damages"] and interest, the plaintiff afterwards, that is to say, on [&c. *teste of the elegit*], comes before the said lady the queen at Westminster, [or in C. P. or Exch. "comes here,"] and, according to the form of the statute in such case made and provided, chooses to be delivered to him all the goods and chattels [&c. *as in form, ante, 184, No. 9,*] to hold, &c. [*as in form, ante, 181, No. 1, to the asterisk*,*] until £——, residue of the damages [or "debt and damages"] and interest aforesaid, shall have been levied: and he prays the writ [&c. *conclude as in form, ante, 187, No. 12.*]

16. *Elegit for the Residue, after a Fieri Facias.*

Victoria [&c. *as ante, 180, No. 1,*] to the sheriff of — greeting : Whereas A. B. lately in our court [&c. *proceed us in a common elegit, as in forms, ante, 180, 181, No. 1, 2, to the words "whereof," &c.*] and whereupon by our writ we lately commanded you, that of the goods and chattels [&c. *recite the fieri facias as ante, 156, No. 17, 18*] : and you on — [or "at that day,"] returned [&c. *recite the return, as ante, 156, No. 17, 18*] : and afterwards the said A. B. came into our court before us [or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer,"] at Westminster aforesaid, and chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also [&c. *as ante, 185, No. 10, to the words "and his assigns," and then thus:*] according to the form of the statute in such case made and provided, until £——, residue of the damages [or "debt and damages"] and interest aforesaid, should be thereof fully levied: Therefore we command you [&c. *proceed as in a common elegit, ante, 180, to the words "to him and to his assigns"*] until the said £——, residue of the damages [or "debt and damages,"] together with interest as aforesaid, shall have been levied: And in what manner you shall have executed this our writ [&c. *in Q. B. conclude as in form, ante, 180, No. 1, or in C. P. as in form, ante, 181, No. 2, in Exchequer.*]

[See 1 Chit. Ar. Pr. 438, 447.]

17. *Warrant to take the Defendant's Goods on Elegit.*

— to wit. S. S. esquire, sheriff of the said county of —, to B. B. &c. my bailiffs, greeting: By virtue of her majesty's writ of elegit to me directed, I command that without fail you jointly or severally seize and take all the goods and chattels of C. D. (except oxen and beasts of the plough,) in my bailiwick, so that I may, by reasonable price, cause the same to be delivered to A. B., to hold to the said A. B. as his proper goods and chattels, and forthwith certify the same to me, so that I certify our lady the queen [*or in C. P. "to the justices of our lady the queen," or in Exchequer, "to the barons of her majesty's Exchequer,"*] thereof at Westminster, at the time appointed for the return of the said writ. Fail not at your peril. Given under my hand and seal of office.

[*Seal of office.*]

By the sheriff.

III. LEVARI FACIAS.

[*See 1 Chit. Ar. Pr. 238; Tidd's Forms, 406, &c.; 10 Wentw. 340. Except in the case of outlawry this writ is completely superseded in practice by the writ of elegit.*]

IV. CAPIAS AD SATISFACIENDUM.

1. *Ca. sa. in Assumpsit, in Q. B. or C. P.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting (a): We command you that you take C. D., if he shall be found in your bailiwick, and him safely keep, so that you have his body before us [*or in C. P. "before our justices,"*] at Westminster, immediately after the execution hereof [*or "on —,"*] to satisfy A. B. for £—, which in our court before us, [*or in C. P. "before our justices,"*] at Westminster, were awarded to the said A. B. for his damages which he sustained, as well on occasion of not performing certain promises [*or "a certain promise," as in the judgment,*] made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as appears to us of record [*or in C. P. omit "as appears to us of record,"*] together with interest upon the said sum of £— at the rate of £4 per centum per annum, from the — day of — [*the day on which judgment was entered up, or if entered up before the 1st of October 1838, say, "from the first day of October, A.D. 1838," and omit the words "on which day the judgment aforesaid was entered up,"*] A.D. —, on which day the judgment aforesaid was entered up: and have you then [*or in C. P. omit the word "then"*] there this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse it thus: "Levy the whole (or 'levy £—,') and interest at £4 per cent. from —, 1839. The defendant is a (tailor), and resides*

(a) See the different directions of writs, ante, 20, note (a).

at No. —, — street. P. A. (Temple), plaintiff's attorney, the — day of —, A.D. —." *As to when you may indorse it, to levy poundage or expenses, &c. see 1 Chit. Ar. Pr. 416; and see form of such indorsement, ante, 149.]*

[See 1 Chit. Ar. Pr. 448.]

2. *The like, in Exchequer.*

Victoria [&c. *as ante*, 190, No. 1,] to the sheriff of —, greeting: We command you, that you omit not by any liberty of your county, but that you enter the same, and take C. D. wheresoever he may be found in your bailiwick, and him safely keep, so that you may have his body before the barons of our Exchequer at Westminster immediately after the execution hereof [or "on —"], to satisfy A. B. for £—, which in our court before the barons of our Exchequer at Westminster were awarded to the said A. B. for his damages which he sustained, as well on occasion of not performing certain promises [or "a certain promise," *as in the judgment*,] made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as by inspecting the rolls of our said Exchequer appears to us, together with interest upon the said sum of £—, at the rate of £4 per centum per annum, from the — day of —, [the day on which judgment was entered up, or if entered up before 1st of October, 1838, say, "from the 1st day of October, A.D. 1838," and omit the words "on which day the judgment aforesaid was entered up,"] A.D. —, on which day the judgment aforesaid was entered up, and have you there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the — year of our reign.

[Indorse it as directed in the *ca. sa. supra.*]

3. *Ca. sa. in Debt, in Q. B. or C. P.*

Victoria [&c. *as ante*, 190, No. 1,] to the sheriff of —, greeting: We command you that you take C. D. if he may be found in your bailiwick, and him safely keep, so that you may have his body before us [or in C. P. "before our justices,"] at Westminster, immediately after the execution hereof, [or "on —,"] to satisfy A. B. as well a certain debt of £—, which the said A. B. lately in our court before us, [or in C. P. "before our justices,"] at Westminster, recovered against him, as also £—, which were adjudged to the said A. B. in our said court for his damages which he sustained, as well on occasion of the detaining the said debt as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as appears to us of record, [or in C. P. omit "as appears to us of record,"] together with interest [&c. *as in form*, ante, 190, No. 1.]

[Indorse it as directed in the *ca. sa. ante*, 190.]

[See 1 Chit. Ar. Pr. 448, &c.]

4. *The like, in Exchequer.*

Victoria [&c. *as ante*, 190, No. 1,] to the sheriff of —, greeting: We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and take C. D. wheresoever he may be found in your bailiwick, and him safely keep, so that you may have his body

before the barons of our Exchequer at Westminster, immediately after the execution hereof [or "on —,"] to satisfy *A. B.* as well a certain debt of £—— which the said *A. B.* lately in our court, before the barons of our Exchequer at Westminster, recovered against him, as also £—— which were adjudged to the said *A. B.* in our said court, for his damages which he sustained, as well on occasion of the detaining the said debt as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as by inspecting the rolls of our said Exchequer appears to us, together with interest [&c. *as in form, ante, 191, No. 2, to the end.*].

[Indorse it as directed with respect to the *ca. sa. ante, 190.*]

5. *Ca. sa. in Covenant.*

[Same as the *ca. sa. in assumpsit, ante, 190, 191, Nos. 1 and 2 respectively, except that instead of the words "on occasion of not performing certain promises made by the said C. D. to the said A. B." say "on occasion of the breach of a certain covenant (or 'certain covenants') made between the said A. B. and the said C. D.*]

6. *Ca. sa. and Distringas in Detinue.*

[A *ca. sa.* may be readily framed from the *fi. fu. and distringas in detinec, ante, 152, 153, No. 7, 8, and the preceding forms.*]

7. *Ca. sa. in Case or Trover.*

[Same as the *ca. sa. in assumpsit, ante, 190, 191, Nos. 1 and 2 respectively, except that instead of the words "on occasion of not performing certain promises made by the said C. D. to the said A. B." say, "on occasion of a certain grievance (or 'certain grievances') then lately committed by the said C. D. to the said A. B."*]

8. *Ca. sa. in Trespass.*

[Same as the *ca. sa. in assumpsit, ante, 190, 191, Nos. 1 and 2 respectively, except that instead of the words "on occasion of not performing certain promises made by the said C. D. to the said A. B." say "on occasion of a certain trespass (or "certain trespasses") then lately committed by the said C. D. to the said A. B."*]

9. *Ca. sa. where one Issue is found for Plaintiff and another for Defendant.*

[Same as in ordinary cases where the judgment is for plaintiff or defendant alone.]

10. *Ca. sa. where one Defendant is found guilty and another acquitted.*

[If the *ca. sa.* be for the plaintiff, it is the same as in ordinary cases where there is a verdict for plaintiff only, see *ante, 190, 191, Nos. 1 and 2: and if the ca. sa. be for the defendant, it is the same as in ordinary cases where there is a verdict for defendant only. See form, post, 202, No. 4.*]

11. *Ca. sa. in Q. B. or C. P. in Vacation on Verdict for Plaintiff, the Judge having certified under 1 Will. 4, c. 7, s. 2, that such Writ ought to issue.*

[Same as in the *fi. fa. ante*, 154, No. 15, to the asterisk*, and then thus:] Therefore we command you that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [or in *C. P.* "before our justices"] at Westminster immediately after the execution hereof [or "on —"], to satisfy the said *A. B.* for the said sum of £—, together with interest [&c. as in form, ante, 190, No. 1, to the end.]

[Indorse it as directed with respect to the *ca. sa. ante*, 190.]

[See 1 *Chit. Ar. Pr.* 289, 397.]

12. *The like, in Exchequer.*

[Same as in the *fi. fa. ante*, 154, No. 15, to the asterisk*, and then thus:] Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same and take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before the barons of our Exchequer at Westminster immediately after the execution hereof [or "on —"], to satisfy the said *A. B.* for the said sum of £—, together with interest [&c. as in form, ante, 191, No. 2, to the end.]

[Indorse it as directed with respect to the *ca. sa. ante*, 190, No. 1.]

13. *Ca. sa. in Assumpsit, in Q. B. or C. P. after a Levy of Part, under a Fi. Fa.*

Victoria [&c. as ante, 190, No. 1,] to the sheriff of —, greeting: Whereas by our writ we lately commanded you that you should cause to be made of the goods and chattels in your bailiwick of *C. D.* the sum of [&c. as in the *fi. fa. to the words*] whereof the said *C. D.* was convicted, as appeared to us of record, [in *C. P.* omitting "as appeared to us of record,"] together with interest [&c. as in the *fi. fa.*], and that you should have that money before [&c. as in the *fi. fa.*], and that you should have there then [in *C. P.* omit the word "then"] that writ: And you on — [or "at that day"] returned to us, [or in *C. P.* "to our justices,"] at Westminster aforesaid, that by virtue of the said writ you had caused to be made of the goods and chattels of the said *C. D.* £—, parcel of the damages and interest aforesaid, which said money you had ready at the time [or "day"] and place in the said writ contained, as by the said writ you were commanded; and that the said *C. D.* had not any other or more goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in your bailiwick, which you could seize or take, or pay or deliver to the said *A. B.*, or whereof you could cause to be made the residue of the said damages, and interest, or any part thereof, according to the exigency of that writ. [Let this agree with the return.] Therefore we command you that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [or in *C. P.* "before our justices,"] at Westminster, immediately after the execution hereof [or "on —"], to satisfy the said *A. B.* for £—, residue of the damages and interest as aforesaid, and have you there then [or in *C. P.* omit the word "then"] this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as directed with respect to the *ca. sa. ante*, 190, No. 1.]

14. *The like, in Exchequer.*

[*Same as in the fi. fa. in the Exchequer, after a levy of part, ante, 156, No. 18, to the end of the return, and then thus :*] Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same and take *C. D.* wheresoever he may be found in your bailiwick, and him safely keep, so that you may have his body before the barons of our Exchequer at Westminster, immediately after the execution hereof [*or "on —"*], to satisfy the said *A. B.* for £——, residue of the damages and interest as aforesaid, and have there this writ. Witness — (name of chief baron), the — day of —, in the year of our Lord —.

[*Indorse it as directed with respect to the ca. sa. ante, 190, No. 1.*]

15. *Ca. sa. in debt, in Q. B. or C. P., after a Levy of Part.*

[*Same as in the fi. fa. in debt, in Q. B. or C. P., after a levy of part, ante, 157, No. 19, to the return of the writ, and then thus :*] Therefore we command you that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in C. P. "before our justices,"*] at Westminster, immediately after the execution hereof [*or "on —"*], to satisfy the said *A. B.* £——, residue of the debt and damages and interest as aforesaid; and have you there then [*or in C. P. omit the word "then"*] this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse it as directed with respect to the ca. sa. ante, 190, No. 1.*]

16. *The like, in Exchequer.*

[*Same as the fi. fa. in the Exchequer, after a levy of part, ante, 157, No. 20, to the end of the return, and then thus :*] Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same and take *C. D.* wheresoever he may be found in your bailiwick, and him safely keep, so that you may have his body before the barons of our Exchequer at Westminster, immediately after the execution hereof [*or "on —"*], to satisfy the said *A. B.* £——, residue of the debt and damages and interest as aforesaid, and have you there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse it as directed with respect to the ca. sa., ante, 190, No. 1.*]

17. *Ca. sa. in Covenant, after a Levy of Part.*

[*Same as the forms, ante, 193, et supra, No. 13, 14, respectively, except that instead of the words "on occasion of not performing certain promises made by the said C. D. to the said A. B." say, "on occasion of a breach of a certain covenant (or 'certain covenants') made between the said A. B. and the said C. D.'"*]

18. *Ca. sa. in Case or Trover, after a Levy of Part.*

[*Same as the forms, ante, 193, et supra, No. 13, 14, respectively, except that instead of the words "on occasion of not performing certain promises*

made by the said *C. D.* to the said *A. B.*" say "on occasion of a certain grievance (or 'grievances') committed by the said *C. D.* to the said *A. B.*"

19. *Ca. sa. in Trespass, after a Levy of Part.*

[Same as the forms, ante, 193, 194, No. 13, 14, respectively, except that instead of the words "on occasion of not performing certain promises made by the said *C. D.* to the said *A. B.*" say "on occasion of a certain trespass (or 'certain trespasses') then lately committed by the said *C. D.* to the said *A. B.*"]

20. *Alias Ca. sa.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you, as before we have commanded you, that you take [&c. proceed as in the ordinary form of a *ca. sa.*]

[See 1 Chit. Ar. Pr. 450.]

21. *Pluries ca. sa.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you, as oftentimes we have commanded you, that you take [&c. proceed as in the ordinary form of a *ca. sa.*]

[See 1 Chit. Ar. Pr. 450.]

22. *Non Omittas ca. sa.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you that you omit not by reason of any liberty in your bailiwick, but that you take [&c. proceed as in the ordinary form of a *ca. sa.*]

[See 1 Chit. Ar. Pr. 450, 508.]

23. *Testatum Ca. sa. in Q. B. or C. P.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of [Leicestershire] greeting: Whereas by our writ we lately commanded our sheriff of [Sussex] that he should take *C. D.* if he should be found in his bailiwick, and him safely keep, so that he might have his body before us [or in *C. P.* "before our justices"] at Westminster, immediately after the execution thereof [or "on —"], to satisfy *A. B.* for £—, which in our court before us [or in *C. P.* "before our justices"] at Westminster, were awarded to the said *A. B.* for his damages which he sustained as well on occasion of not performing certain promises made by the said *C. D.* to the said *A. B.* [if in debt, covenant, case, or trespass, alter this as in the respective forms ante, 191, 192,] as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* was convicted, as appeared to us of record, [or in *C. P.* omit "as appeared to us of record,"] together with interest [&c. as in *ca. sa.*], and our said sheriff of [Sussex] on — [or "at that day"] returned to us [or in *C. P.* "to

our justices at Westminster"], that the said *C. D.* was not found in his bailiwick. Whereupon, on the behalf of the said *A. B.*, it is testified in our said court that the said *C. D.* wanders up and down and secretes himself in your county; therefore we command you that you take the said *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, [*or in C. P. "before our justices,"*] at Westminster, immediately after the execution hereof [*or "on —"*], to satisfy the said *A. B.* for his damages [*or "debt and damages"*] and interest as aforesaid, and have you there then [*or in C. P. omit the word "then"*] this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as directed with respect to the *ca. sa. ante*, 190, No. 1.]

[See 1 *Chit. Ar. Pr.* 450.]

24. *Testatum Ca. sa. in Exchequer.*

Victoria, [*&c. as ante*, 195, No. 23,] to the sheriff of [Leicestershire], greeting: Whereas by our writ we lately commanded our sheriff of [Sussex] that he should not omit by reason of any liberty of his county, but that he should enter the same and take *C. D.* wheresoever he should be found in his bailiwick, and him safely keep, so that he might have his body before the barons of our Exchequer at Westminster, immediately after the execution thereof [*or "on —"*], to satisfy *A. B.* for £—, which in our court before the barons of our Exchequer at Westminster were awarded to the said *A. B.* for his damages which he sustained, as well on occasion of not performing certain promises made by the said *C. D.* to the said *A. B.* [*if in debt, covenant, case, or trespass, alter this as in the respective forms, ante*, 191, 192] as for his costs and charges by him about his suit in that behalf expended, as by inspecting the rolls of our said Exchequer appeared to us, together with interest [*&c. as in the ca. sa.*]; and our said sheriff of [Sussex] on — [*or "at that day"*] returned to the barons of our Exchequer at Westminster, that the said *C. D.* was not found in his bailiwick. Whereupon, on the behalf of the said *A. B.*, it is testified in our said court, that the said *C. D.* wanders up and down and secretes himself in your county; therefore we command you, that you omit not by reason of any liberty in your county, but that you enter the same and take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before the barons of our Exchequer at Westminster, immediately after the execution hereof [*or "on —"*], to satisfy the said *A. B.* for his damages [*or "debt and damages"*] and interest as aforesaid, and have you there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as directed with respect to the *ca. sa. ante*, 190, No. 1.]

25. *Ca. sa. into a County Palatine.*

Victoria, [*&c. as ante*, 190, No. 1,] to the chancellor of our county palatine of Lancaster [*or Durham (a),*] or his deputy there, greeting: We command you, that by our writ under the seal of our said county palatine, to be duly made, and to be directed to the sheriff of our said county palatine, you cause the said sheriff to be commanded that he take *C. D.* if he shall

(a) See as to Durham, *ante*, 21 n. (b).

be found in his bailiwick, and him safely keep, so that you may have his body before [*&c. proceed and conclude as in the ordinary form of a ca. sa. ; see forms, ante, 190, 191.*]

26. *Alias or Pluries Ca. sa. to a County Palatine.*

Victoria, &c. to the chancellor [*&c. as in preceding form.*] We command you, as before [*or if a pluries, "as oftentimes"*] we have commanded you, that by our writ, [*&c. proceed as in preceding form.*]

27. *Testatum Ca. sa. to a County Palatine.*

Victoria, &c. [*as ante, 196, No. 25,*] greeting: Whereas we lately commanded our sheriff of [Middlesex] that he should take *C. D.* if he should be found in his bailiwick, and him safely keep, so that he might have his body before [*&c. as in the ca. sa. to the words*], whereof the said *C. D.* was convicted, as appeared to us of record, [*or in C. P. omit "as appears to us of record," or in Exch. say, "as by inspecting the rolls of our Exchequer appears to us,"*] together with interest [*&c. as in the ca. sa.*]; and our said sheriff of [Middlesex] on —, [*or "at that day,"*] returned to us [*or in C. P. "to our justices," or in Exch. "to the barons of our Exchequer,"*] at Westminster, that the said *C. D.* was not found in his bailiwick. Whereupon, on the behalf of the said *A. B.*, it is testified in our said court, that the said *C. D.* wanders up and down and secretes himself in our said county palatine; therefore we command you that by our writ, under the seal of our said county palatine, to be duly made, and to be directed to the sheriff of our said county palatine, you cause the said sheriff to be commanded that he take *C. D.* if he shall be found in his bailiwick, and him safely keep, so that you may have his body before [*&c. conclude as in the ordinary form of a ca. sa., see forms, ante, 190, 191.*]

28. *Testatum Ca. sa. from a County Palatine.*

Victoria, [*&c. as ante, 190, No. 1,*] to the sheriff of [Middlesex], greeting: Whereas we lately commanded our chancellor of our county palatine of Lancaster [*or "Durham," (a)*] (*according to the direction of the ca. sa.*), that by our writ, under the seal of our said county palatine to be duly made, and to be directed to the sheriff of our said county palatine, he should cause the said sheriff to be commanded that he should take *C. D.* if he might be found in his bailiwick, and him safely keep, so that he might have his body before [*&c. as in the ca. sa. if in Q. B. to the words "whereof the said C. D. was convicted, as appeared to us of record, or in C. P. to the words "whereof the said C. D. was convicted," or in Exch. to the words "as by inspecting the rolls of our Exchequer appeared to us,"*] together with interest [*&c. as in the ca. sa.*] And our said chancellor of our said county palatine (*or the person by whom the return was made*) on — [*or "at that day"*] returned to us [*or in C. P. "to our justices," or in Exch. "to our barons"*] at Westminster, that by virtue of the said writ to him directed, he had, by another writ under the seal of our said county palatine duly made and directed to the sheriff of the said county palatine, commanded the said sheriff as by the said first-mentioned writ he was commanded; and which said sheriff, in answer to the said writ so directed to him as aforesaid, had returned to our said chancellor of our said county palatine (*or the person by whom the return if any was made*), that the said *C. D.* was not found in his bailiwick. Whereupon, on the behalf of the said *A. B.*, it is testified in

(a) See as to Durham, *ante*, 21. n. (b).

our said court, that the said *C. D.* wanders up and down and secretes himself in your county; therefore we command you that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep [&c. conclude as in the ordinary testatum *ca. sa.*, see ante, 195, 196, No. 23, 24.]

29. *Ca. sa. to a County Palatine, after a Levy of Part under a Fi. Fa.*

[Proceed as in the *fi. fa.* ante, 156, No. 17, 18, to the asterisk*, and then thus:] Therefore we command you, that by our writ, under the seal of our said county palatine to be duly made, and to be directed to the sheriff of our said county palatine, you cause the said sheriff to be commanded that he take the said *C. D.* if he may be found in his bailiwick, and him safely keep, so that you may have his body before us [or in *C. P.* "before our justices," or in *Exch.* "before our barons"] at Westminster, immediately after the execution hereof, [or "on —,"] to satisfy the said *A. B.* £——, residue of the damages [or "the debt and damages"] and interest as aforesaid; and have you there then [or in *C. P.* or *Exch.* omit the word "then"] this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[Indorse it as directed with respect to the *ca. sa.*, ante, 190, No. 1.]

30. *Warrant on a Ca. sa.*

— (to wit.) *S. S.* esq. sheriff of the said county, to *B. B.* my bailiff, greeting: By virtue of her majesty's writ to me directed and delivered, I command you, that you [if in *Exch.* say, "omit not by reason of any liberty in my county, but that you enter the same and"] take *C. D.* wheresoever he may be found in my bailiwick, and him safely keep, so that I may have his body before the barons of her majesty's Exchequer, [or in *Q. B.* "before our lady the queen," or in *C. P.* "before the justices of our lady the queen,"] at Westminster, immediately after the execution hereof, [or "on —,"] to satisfy *A. B.* of 21*l.* 11*s.* 6*d.* which the said *A. B.* in her majesty's court, before the barons of her majesty's Exchequer, [or in *Q. B.* "before the queen herself," or in *C. P.* "before the justices aforesaid,"] at Westminster, recovered against him for his damages which he sustained by reason of not performing certain promises (as the form of action is) by the said *C. D.* to the said *A. B.* lately made, whereof the said *C. D.* is convicted, together with interest [&c. as in the *ca. sa.*:] and have you this warrant, and fail not at your peril. Given under the seal of my office the — day of —, A.D. —.

By the Sheriff
(Seal of office.)

Mr. *P. A.* attorney for the plaintiff.
The writ issued the — day of —.
Take no bail whatever.

31. *Supersedeas to a Ca. sa. irregularly issued.*

Victoria, [&c. as ante, 195, No. 23,] to the sheriff of —, greeting: Whereas we lately commanded you by our writ, that you [&c. reciting the writ of *ca. sa.* to the words "appears to us"], as in the said writ is more fully contained: Nevertheless, because after the issuing of the said writ, it appeared to the court of our lady the queen before the queen herself, [or in *C. P.* "to the justices of our lady the queen," or in *Exch.* "to the barons of our said Exchequer"] at Westminster aforesaid, that the said writ

V. EXECUTION, FOR THE DEFENDANT.

1. *Fi. fa. on a Verdict for Defendant.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting : We command you, that you cause to be made of the goods and chattels in your bailiwick of *A. B.*, the sum of £—, which lately in our court before us [*or in C. P. "before our justices," or in the Exchequer, "before the barons of our Exchequer,"*] at Westminster were awarded to *C. D.* according to the form of the statute in such case made and provided*, for his costs and charges by him laid out and expended about his defence in a certain action on promises, [*or as the cause of action was,*] lately prosecuted in our said court by the said *A. B.* against the said *C. D.*, whereof the said *A. B.* is convicted, as appears to us of record, [*or in C. P. omit the words "as appears to us of record," or in the Exchequer say, "as by inspecting the rolls of our Exchequer appears to us,"*] together with interest on the said sum of £—, at the rate of £4 per centum per annum, from the — day of — [*the day on which judgment was entered up, or if entered up before the 1st day of October, 1838, say, "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up,"*] A. D. —, on which day the judgment aforesaid was entered up; and have you that money before us [*or in C. P. "before our justices," or in Exchequer, "before our barons"*] at Westminster, immediately after the execution hereof [*or "on —"*], to render to the said *C. D.* for his costs and charges and interest aforesaid [*or in Exchequer instead of the words "render" &c. say, "to be then and there paid to the said C. D. or his attorney"*], and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, and have there then [*or in C. P. or Exchequer, omit the word "then"*] this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse this writ: "Levy the whole (or 'levy £—') [besides sheriff's poundage, officers' fees, and all other incidental expenses (a).] The plaintiff is a (tailor,) and resides at (Brentford.) D. A. (Temple,) defendant's attorney, —, 1840."*]

[*See 1 Chit. Ar. Pr. 456.*]

2. *The like, after a Levy of Part.*

Victoria, [*&c. as supra,*] to the sheriff of —, greeting : Whereas by our writ we lately commanded you that you should cause to be made of the goods and chattels in your bailiwick of *A. B.* the sum of [*&c. as in the fi. fa. supra, to the words "whereof the said A. B. was convicted, as ap-*

(a) These cannot legally be levied in case of an execution against a plaintiff, see 1 Chit. Ar. Pr. 456; except, perhaps, where plaintiff ex-

pressly agrees that they may be levied in consideration of forbearance or the like.

and the execution of the same within the liberty aforesaid, so that no execution of this writ can be made by me within the said liberty, which said bailiff hath not yet given me any answer thereto, [or "hath answered that the within-named C. D. is not found in his bailiwick," or "that he hath taken the within-named C. D. whose body he hath ready."]

[See 1 Chit. Ar. Pr. 454.]

37. *Entry and Award of Ca. sa. Alias und Testatum.*

[To the end of the entry of the judgment, and then thus:] Afterwards, to wit, on the — day of —, the plaintiff comes here into court, by his attorney aforesaid, and prays the writ of the lady the queen of *capias ad satisfaciendum*, to be directed to the sheriff of —, commanding him, that he take the defendant if he be found in his bailiwick, and him safely keep, so that he may have his body before the said lady the queen [or in C. P. "before the justices of our lady the queen," or in *Erch.* "before the barons of our lady the queen of her Exchequer,"] at Westminster, immediately after the execution thereof [or "on —"], to satisfy the plaintiff his damages [or "debt and damages"] aforesaid, together with interest [&c. *as in ca. sa.*]; and it is granted to him &c.: the same time [or "day"] is given to the plaintiff at the same place: And afterwards, to wit, on — [or "which day"], before the said lady the queen [or in C. P. "before the said justices," or in *Erch.* "before the said barons,"] at Westminster, comes the plaintiff by his attorney aforesaid; and the sheriff, to wit, S. S. sheriff of the county aforesaid, now here, returns to the said lady the queen [or in C. P. "to the said justices," or in *Erch.* "to the said barons,"] at Westminster aforesaid, that the defendant is not found in his bailiwick: Whereupon the plaintiff prays another writ of the said lady the queen of *capias ad satisfaciendum*, to be directed to the said sheriff of —, commanding him in form aforesaid; and it is granted to him, returnable before the said lady the queen, [or in C. P. "before the said justices," or in *Erch.* "before the said barons,"] at Westminster, immediately after the execution thereof [or "on —"]; the same time [or "day"] is given to the plaintiff at the same place: And afterwards, to wit, on — [or "at which day"], before the said lady the queen, [or in C. P. "before the said justices," or in *Erch.* "before the said barons,"] at Westminster, comes the plaintiff by his attorney aforesaid; and the sheriff hath not sent the said last-mentioned writ, nor hath he done any thing thereupon: Whereupon, on behalf of the plaintiff, it is sufficiently testified in the said court, that the defendant runs up and down and secretes himself in the county of —; and thereupon the plaintiff prays the writ of the said lady the queen of *testatum capias ad satisfaciendum* against the defendant, to be directed to the sheriff of the said county of —, commanding him in form aforesaid; and it is granted to him, returnable before the said lady the queen [or in C. P. "before the said justices," or in *Erch.* "before the said barons,"] at Westminster, immediately after the execution thereof [or "on —"]; the same time [or "day"] is given to the plaintiff at the same time.

V. EXECUTION, FOR THE DEFENDANT.

1. *Fi. fa. on a Verdict for Defendant.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting : We command you, that you cause to be made of the goods and chattels in your bailiwick of *A. B.*, the sum of £——, which lately in our court before us [*or in C. P. “before our justices,” or in the Exchequer, “before the barons of our Exchequer,”*] at Westminster were awarded to *C. D.* according to the form of the statute in such case made and provided*, for his costs and charges by him laid out and expended about his defence in a certain action on promises, [*or as the cause of action was,*] lately prosecuted in our said court by the said *A. B.* against the said *C. D.*, whereof the said *A. B.* is convicted, as appears to us of record, [*or in C. P. omit the words “as appears to us of record,” or in the Exchequer say, “as by inspecting the rolls of our Exchequer appears to us,”*] together with interest on the said sum of £——, at the rate of £4 per centum per annum, from the — day of — [*the day on which judgment was entered up, or if entered up before the 1st day of October, 1838, say, “from the 1st day of October, A. D. 1838,” and omit the words “on which day the judgment aforesaid was entered up,”*] A. D. —, on which day the judgment aforesaid was entered up; and have you that money before us [*or in C. P. “before our justices,” or in Exchequer, “before our barons”*] at Westminster, immediately after the execution hereof [*or “on —”*], to render to the said *C. D.* for his costs and charges and interest aforesaid [*or in Exchequer instead of the words “render” &c. say, “to be then and there paid to the said C. D. or his attorney”*], and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, and have there then [*or in C. P. or Exchequer, omit the word “then”*] this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse this writ: “Levy the whole (or ‘levy £——’) [besides sheriff’s poundage, officers’ fees, and all other incidental expenses (a).] The plaintiff is a (tailor,) and resides at (Brentford.) D. A. (Temple,) defendant’s attorney, —, 1840.”*]

[*See 1 Chit. Ar. Pr. 456.*]

2. *The like, after a Levy of Part.*

Victoria, [*&c. as supra,*] to the sheriff of —, greeting : Whereas by our writ we lately commanded you that you should cause to be made of the goods and chattels in your bailiwick of *A. B.* the sum of [*&c. as in the fi. fa. supra, to the words “whereof the said A. B. was convicted, as ap-*

(a) These cannot legally be levied in case of an execution against a plaintiff, see 1 Chit. Ar. Pr. 456; except, perhaps, where plaintiff ex-

pressly agrees that they may be levied in consideration of forbearance or the like.

peared to us of record," or in *C. P.* omit the words "as appeared to us of record," or in *Exchequer*, say, "as by inspecting the rolls of our Exchequer appears to us"], together with interest [*&c. as in fi. fa.*], and that you should have that money before [*&c. as in the fi. fa.*], and that you should have there [then] that writ. And you on —, [or "at that day,"] returned to us, [or in *C. P.* "to our justices," or in the *Exchequer*, "to our barons,"] at Westminster aforesaid, that, by virtue of the said writ, you had caused to be made of the goods and chattels of the said *A. B.* £——, parcel of the said sum of £—— and interest, in the said writ mentioned, which money you had ready at the time [or "day"] and place in the said writ contained, as by the said writ you were commanded; and that the said *A. B.* had not any other or more goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in your bailiwick, which you could seize or take or pay or deliver to the said *C. D.*, or whereof you could cause to be made the residue of the sum and interest in the said writ mentioned as aforesaid, or any part thereof; according to the exigency of that writ. Therefore we command you that you cause to be made of the goods and chattels in your bailiwick of the said *A. B.* the sum of £——, residue of the said sum of £—— and interest in the said writ mentioned; and have you that money before [*&c. conclude as in the fi. fa. ante*, 201, No. 1.]

3. *Fi. fa. for Defendant, on Verdict for Plaintiff, for the Difference between the Taxed Costs and Sum recovered, on Stat. 43 Geo. 3, c. 46, s. 3, where the Plaintiff recovers less than the Sum for which the Defendant was held to bail.*

Victoria [*&c. as ante*, 201, No. 1,] to the sheriff of —, greeting: We command you, that of the goods and chattels of *A. B.* in your bailiwick, you cause to be made the sum of £——, parcel of the sum of £——, which lately in our court before us [or in *C. P.* "before our justices," or in *Exchequer* "before the barons of our Exchequer,"] at Westminster, were adjudged to *C. D.* according to the form of the statute in such case made and provided, for his costs and charges by him laid out in and about his defence in a certain action on [promises] lately prosecuted in our said court by the said *A. B.* against the said *C. D.*, (and in which said action he the said *C. D.* was arrested and held to special bail at the suit of the said *A. B.* to the amount of the sum of £——,) after deducting the sum of £—— recovered by the said *A. B.* in the said action, from the amount of the said sum of £——; for that the said *A. B.* had not any reasonable or probable cause for causing the said *C. D.* to be arrested, and held to special bail, in such amount as aforesaid; whereof [*&c. conclude as usual as in form, ante*, 201.]

[*See 2 Chit. Ar. Pr. Book 4, Part 1, Chap. 30.*]

4. *Ca. sa. on a Verdict for Defendant.*

Victoria, [*&c. as ante*, 201, No. 1,] to the sheriff of —, greeting: We command you that you take *A. B.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, [or in *C. P.* "before our justices," or in the *Exch.* "before the barons of our Exchequer,"] at Westminster, immediately after the execution hereof, [or "on —,"] to satisfy *C. D.* £——, which lately in our court before us, [or in *C. P.* "before our justices," or in the *Exch.* "before our barons,"]

at Westminster, were awarded to the said C. D., according to the form of the statute in such case made and provided*, for his costs and charges by him laid out and expended about his defence in a certain action on promises [or as the action was] lately prosecuted in our said court by the said A. B. against the said C. D., whereof the said A. B. is convicted, as appears to us of record, [or in C. P. omit "as appears to us of record," or in the Exch. say, "as by inspecting the rolls of our Exchequer appears to us,"] together with interest on the said sum of £——, at the rate of £4 per centum per annum, from the —— day of —— [day on which judgment was entered up, or if entered prior to 1st Oct. 1838, then say, "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up,"] A. D. ——, on which day the judgment aforesaid was entered up; and have you there then [or in C. P. or Exchequer, omit the word "then"] this writ. Witness —— (name of chief justice or chief baron), at Westminster, the —— day of ——, in the year of our Lord ——.

[Indorse this writ: "Levy the whole, (or 'levy £——,') and interest from —— 1840.] The plaintiff is a (tailor,) and resides at (Brentford.) D. A. (Temple,) defendant's attorney, ——, 1840." As to when you may indorse the writ to levy poundage and expenses, &c. see 1 Chit. Ar. Pr. 456, and see form of indorsement, ante, 201, No. 1.]

5. *Ca. sa. on Verdict for Defendant, after a Levy of Part.*

[Same as in the form, ante, 201, No. 2, to the asterisk*, and then thus:] Therefore we command you that you take the said A. B. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [or in C. P. "before our justices," or in the Exch. "before our barons,"] at Westminster, immediately after the execution hereof, [or "on ——,"] to satisfy the said C. D. £——, residue of the said sum of £——, and interest, in the said writ mentioned; and have you there then [or in C. P. or Exch. omit the word "then"] this writ. Witness —— (name of chief justice or chief baron), at Westminster, the —— day of ——, in the —— year of our reign.

[Indorse it as directed with respect to the ca. sa. supra.]

SECTION V.

ENTRY OF SATISFACTION ON THE ROLL.

1. *Warrant of Attorney to acknowledge Satisfaction.*

To E. F., G. H. and J. K. attornies of the Court of Queen's Bench, [or "Common Pleas," or "Exchequer of Pleas,"] at Westminster, jointly and severally, or to any other attorney of the same court.

Whereas I A. B. of ——, on the —— day of ——, A. D. ——, obtained final judgment in her majesty's Court of Queen's Bench, [or "Common Pleas," or "Exchequer of Pleas,"] at Westminster, against C. D. of ——, for £—— debt, and £—— costs, [or "for £——

damages and costs,"] as by the record thereof may appear; and whereas I the said *A. B.* have received satisfaction for the same; these are therefore to desire and authorise you the attornies above-named, or any one of you, or any other attorney of the same court, to acknowledge and enter satisfaction upon the record of the said judgment; and for your so doing this shall be your sufficient warrant and discharge in that behalf. In witness whereof I have hereunto set my hand and seal the — day of —, in the year of our Lord 1840. *A. B.*

Sealed and delivered in my presence, *W. W.*

[See 1 *Chit. Ar. Pr.* 456.]

2. *Satisfaction-piece in Q. B.*

— term, in the — year of the reign of Queen Victoria. Ellenborough.

— to wit. Satisfaction is acknowledged between *A. B.* plaintiff and *C. D.* defendant, in an action on promises for £— damages and costs, [or "in an action of debt for £— debt, and £— damages, &c."]

Judgment entered on the — day of —, A. D. —. Roll —.

P. A. attorney, —, 1840.

[See 1 *Chit. Ar. Pr.* 457.]

3. *Judge's Fiat, for entering Satisfaction, in C. P.*

B. } Upon reading the warrant of *A. B.* the plaintiff in this action,
v. } and upon hearing the attornies or agents on both sides, I order
D. } that the masters do enter satisfaction upon the record in this action.
 Dated the — day of —, 1840.

[*Judge's name.*]

4. *Entry of Satisfaction.*

Afterwards, to wit, on —, in the — year of the reign of the lady the queen, before the said lady the queen at Westminster, comes [or is *C. P.* or *Exchequer*, "afterwards, to wit, on —, in the — year of the reign of the lady the queen, comes here"] the said *A. B.* by his attorney aforesaid, [or "by *P. A.* his attorney in this behalf,"] and acknowledgeth himself to be satisfied by the said *C. D.* of the damages, costs, and charges aforesaid [or in debt, "of the debt and damages aforesaid:"] therefore let the said *C. D.* be thereof acquitted, &c.

[See 1 *Chit. Ar. Pr.* 457.]

5. *Entry of Satisfaction in Roll in Q. B. after Death of Plaintiff.*

Afterwards, to wit, on the — day of —, A. D. —, before our lady the queen at Westminster, comes the said *C. D.* by — his attorney, and the said *A. B.* comes not, and hereupon *E. F.* and *G. H.* by — their attorney, appointed and constituted by special warrant to them in that behalf directed, and by leave of sir —, one of her majesty's justices of the court of —, come here into court and give the said court here to understand and be informed, that after the giving of the judgment aforesaid, to wit, on the — day of —, A. D. —, in the county of —, the said *A. B.* died, having first duly made and published his last will and testament in writing, bearing date the — day of —,

A. D. 1840, and whereby he appointed the said *E. F.* and *G. H.* executors thereof: after whose death, to wit, on the said — day of —, A. D. —, in the county aforesaid, the said *E. F.* and *G. H.* duly proved the said last will and testament, and took upon themselves the burden of the execution thereof: and which premises the said *C. D.* doth not deny, but he admits the same to be true. And hereupon before our lady the queen at Westminster, the said *E. F.* and *G. H.*, by their attorney aforesaid, acknowledge themselves, as executors as aforesaid, to be satisfied by the said *C. D.* of the damages [or “debt and damages”] aforesaid. Therefore let the said *C. D.* be thereof acquitted, &c.

BOOK I.

PART II.

BAILABLE PROCEEDINGS.

1. *Affidavit to hold to bail*, 206.
2. *Judge's Order to hold to bail*, 227.
3. *Discharge of the Defendant from custody, &c., ib.*
4. *Process, &c., ib.*
5. *The Arrest, Bail-bond, &c.*, 231.
6. *Proceedings against the Sheriff*, 235.
7. *Proceedings on the Bail-bond*, 239.
8. *Setting aside Proceedings against the Sheriff or on the Bail-bond*, 242.
9. *Bail put in and justified in Town*, 247.
10. *Bail put in in the Country*, 261.
11. *Bail put in and justified when Defendant in custody*, 264.
12. *Paying Money into Court in lieu of Bail*, 267.
13. *Proceedings by and against Bail*, 268.

I. AFFIDAVIT TO HOLD TO BAIL.

1. *Affidavit by the Plaintiff.*

In the Q. B. [or "C. P." or "Exch. of Pleas" (a).]

Between { A. B. plaintiff,
and
C. D. defendant (b).

A. B. (c) of ——— (d) the above-named plaintiff, maketh oath and saith that C. D. (e) the defendant in this suit, before and at the time of the commencement of this suit, was and still is justly and truly in—

(a) The title of the court in which the action is brought ; and as to which title see 1 Chit. Ar. Pr. 484.

(b) The title of the cause in which the arrest is made ; as to which see 1 Chit. Ar. Pr. 484.

(c) The party making the affidavit. It may be made by the plaintiff, or by one of several partners, or by any agent, clerk or third person, who is

a competent witness, and who can swear to the debt ; and see in general 1 Chit. Ar. Pr. 496, and the Forms, post, 209.

(d) The deponent's addition and place of abode ; and as to which see 1 Chit. Ar. Pr. 485.

(e) The christian and surname of the defendant at length ; and as to which see 1 Chit. Ar. Pr. 485.

debted to this deponent in — pounds (a), for, [*&c. here state the cause of action for which you intend arresting defendant, and which will in most cases be found amongst the forms, post, from p. 212 to 227*], and this deponent further saith [*here state the facts which show that the defendant is about to quit England unless forthwith apprehended, for instance, "that the said C. D. now is a captain, actually serving in her majesty's — regiment of the line, and did on the — day of —, A. D. 1839, receive orders to proceed without delay along with his regiment to parts beyond the jurisdiction of this court, namely, to Quebec, in North America," or "that the said C. D. is a native of and domiciled in Ireland, and hath no fixed residence in England, and that the said C. D. in a conversation with this deponent, on the — day of — last, informed this deponent that the said C. D. intended to return to Ireland in the course of the then next week," or as the case may be*], and this deponent further saith, that for the reasons aforesaid, he verily believes that the said C. D. is about to quit England unless he be forthwith apprehended; and this deponent further saith, that he hath caused a writ of summons to be sued out of this honourable court, at the suit of this deponent, against the above-named defendant, a true copy of which is hereunto annexed.

A. B.

"Sworn at — this — day
of —, 1840, before me E. F." (b)

[*If it be sworn before one of the masters, the jurat is thus*]:

"Sworn at — Temple, London, this — day of —,
1840, before me,

M. M. one of the Masters of the Court of Q. B.
[or "C. P." or "Exch. of Pleas,"] (or perhaps
this description may be altogether omitted.)

[*If it be sworn in court,*]

"Sworn in court, [*or, if the court be not mentioned at the top of the affidavit, 'in the Court of Queen's Bench, Common Pleas, or Exchequer of Pleas,'*] at Westminster Hall, the — day of —, 1840. By the Court."

[*If it be sworn before a judge,*]

"Sworn at my chambers, in Serjeants' Inn, Chancery Lane [*or 'at my house, in —,' according to where the affidavit is sworn*], the — day of —, 1840, before me. J. L." [*The judge's name.*]

[*If it be sworn before a commissioner authorised to take affidavits by the statute 29 Car. 2, c. 5.*]

"Sworn at —, in the county of —, the — day of —, 1840, before me C. C. a commissioner, &c.
[*Or, if the court be not mentioned at the top of the affidavit, 'a commissioner for taking affidavits in the court of —.'*"]

(a) The amount of the cause of action for which you intend arresting defendant, and which you can swear to be due; it must amount to 20*l*. See 1 Chit. Ar. Pr. 480. As to the mode of stating it in the case of a bill, see 1 Chit. Ar. Pr. 490, 491, and post, 218.

(b) This is called the jurat, and

you must state in it the place where, and name of the person before whom, the affidavit is sworn; and if it be made by several persons, their names must be written in the jurat, as in the form, post, 209. The day, month and year, if necessary, must also be stated. See 2 Chit. Ar. Pr. book 4, part I, ch. 35.

[If it be sworn before a commissioner authorised to take affidavits in Scotland or Ireland by statute 3 & 4 Will. 4, c. 42, s. 42.]

"Sworn at —, in the kingdom of Scotland [or "Ireland,"] the — day of —, 1840, before me C. C. a commissioner for taking affidavits in the Court of Q. B. [C. P. and Exch. of Pleas] in England."

[If it be sworn before a commissioner by a person who from his signature or otherwise appears to be illiterate.]

"Sworn at —, in the county of —, the — day of —, 1840, before me C. C. a commissioner, &c. [or if the court be not mentioned at the top of the affidavit, 'a commissioner for taking affidavits in the court of —.'] And I do hereby certify, that the above affidavit was first read over by me, [or, 'in my presence,'] to the above-named A. B., and that he seemed perfectly to understand the same, and wrote his signature [or, 'made his mark'] thereto in my presence." *[See 2 Chit. Ar. Pr. book 4, part 1, ch. 35.]*

[If it be sworn by a foreigner and interpreted to him, this is the form of the interpreter's oath, and jurat thereon.]

"You swear that you have [if already interpreted] truly interpreted this affidavit to the deponent; and that you will truly interpret the oath to be taken by him,

So help you God."

"Sworn at [the Master's office, Temple, London, or as the case may be], the — day of —, by the deponent A. B., the contents of the above affidavit having been first read over and explained to him, in the — language, by E. F. of —, who was first sworn duly to interpret the same, before me M. M."

[See 1 Chit. Ar. Pr. book 4, part 1, ch. 35.]

2. *Affidavit of Signature of a Scotch Magistrate.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

E. F. of —, —, maketh oath and saith, that he knows and is well acquainted with the hand-writing of S. S. esq., one of her majesty's justices of the peace in and for the town of —, in that part of the United Kingdom of Great Britain and Ireland called Scotland; and that the name of S. S. set and subscribed to the affidavit of A. B. hereunto annexed, is of the proper hand-writing of the said S. S., as this deponent verily believes.

Sworn, &c. *[as in the preceding forms of jurats.]*

[See 1 Chit. Ar. Pr. 496.]

3. *Quaker's Affirmation.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

A. B. of —, [banker,] the above-named plaintiff, being one of the people called Quakers, doth solemnly affirm that C. D., the above-named

defendant, before and at the time of the commencement of this suit, was and still is justly and truly indebted to this affirmant in the sum of [&c. state the cause of action and other facts, as in other cases, except that instead of calling the party "deponent," call him "affirmant."]

4. Affidavit when made by several Deponents.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

A. B. of —, the above-named plaintiff, and C. D. of —, —, severally make oath and say: and first, this deponent A. B. for himself saith, that, &c. [stating what is sworn to by A. B.] And this deponent C. D. for himself saith, &c. [stating what is sworn to by C. D.].

The above-named deponents A. B. and C. D. were sworn in court, [or "at my chambers," &c.] (as in the preceding forms of jurats.)

[See 2 Chit. Ar. Pr. book 4, part 1, ch. 35.]

5. The like, by a Third Person.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. C. of —, —, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit, was and still is justly and truly indebted to A. B., the above-named plaintiff, in — pounds, for [&c. state the cause of action and other facts necessary to obtain the order.]

[See 1 Chit. Ar. Pr. 496.]

6. The like, as to Cause of Action only, by one of several Partners.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. and E. F. plaintiffs and C. D. defendant.

A. B. of —, —, one of the above-named plaintiffs, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit, was and still is justly and truly indebted to this deponent and the above-named E. F. in — pounds, for goods sold and delivered by this deponent and the said E. F. to the said C. D. at his request, [or as the cause of action may be.]

7. The like, by a surviving Partner.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

A. B. of —, —, the above-named plaintiff, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit, was and still is justly and truly indebted to this deponent in — pounds, for [goods sold and delivered by this deponent and one E. F. in his life-time, now deceased, to the said C. D. at his request,] (or as the cause of action may be.)

8. *The like, against a surviving Partner.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

A. B. of —, —, the above-named plaintiff, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit, was and still is justly and truly indebted to this deponent in — pounds, for [goods sold and delivered by this deponent to the said C. D. and one E. F. in his life-time, now deceased, at their request,] (or as the cause of action may be.) (It is not in general requisite to describe the defendant as a surviving partner.)

9. *The like, by Wife in Action by Husband and Wife on cause of Action before Marriage.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. and E. his wife, plaintiffs, and C. D. defendant.

E. B. of —, —, the wife of A. B., one of the above-named plaintiffs, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit was and still is justly and truly indebted to the said A. B. and this deponent, in — pounds, for [goods sold and delivered by this deponent whilst she was sole and unmarried, to the said C. D. at his request,] (or as the cause of action may be.)

10. *The like, against Husband and Wife on Cause of Action against Wife before Marriage.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. and E., his wife, defendants.

A. B. of —, —, the above-named plaintiff, maketh oath and saith, that C. D. and E. his wife the above-named defendants, before and at the time of the commencement of this suit were and still are justly and truly indebted to this deponent in — pounds, for [goods sold and delivered by this deponent to the said E. whilst she was sole and unmarried, at her request,] (or as the cause of action may be.)

11. *The like, by one of several Assignees of a Bankrupt.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B., G. G., and G. H., assignees of the estate and effects of E. F., a bankrupt, plaintiffs, and C. D. defendant.

A. B. of —, —, one of the above-named plaintiffs, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit, was and still is justly and truly indebted to this deponent and the above-named G. G. and G. H., as assignees of the estate and effects of the said E. F. a bankrupt, in — pounds, for [goods sold and delivered by the said E. F. before he became a bankrupt, to the said C. D. at his request,] (or as the cause of action may be,) as appears by the books of the said E. F., and as this deponent verily believes.

[See 1 Chit. Ar. Pr. 487.]

12. *The like, by an Assignee of an Insolvent Debtor.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.*, assignee of the estate and effects of *E. F.*,
(heretofore an insolvent debtor) according to the statutes in
force for the relief of insolvent debtors in England, plaintiff,
and *C. D.* defendant.

A. B. of —, —, the above-named plaintiff, assignee of the estate
and effects of the said *E. F.*, heretofore an insolvent debtor, and duly
discharged from imprisonment according to the statutes in force con-
cerning insolvent debtors, maketh oath and saith, that *C. D.*, the above-
named defendant, before and at the time of the commencement of this
suit, was and still is justly and truly indebted to this deponent, as assignee
as aforesaid, in — pounds, for [goods sold and delivered by the said
E. F. to the said *C. D.* at his request,] (or as the cause of action may be,) before the said *E. F.* subscribed his petition for his discharge from impris-
onment, and before the assignment of his estate and effects to this depo-
nent, according to the provisions of the statutes in such case made and
provided, as appears by the books of the said *E. F.*, and as this deponent
verily believes.

[See 1 Chit. Ar. Pr. 487.]

13. *The like, by an Executor.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.*, executor of the last will and testament of *E. F.*,
deceased, plaintiff, and *C. D.* defendant.

A. B. of —, —, the above-named plaintiff, executor of the last
will and testament of the said *E. F.*, deceased, maketh oath and saith,
that *C. D.*, the above-named defendant, before and at the time of the
commencement of this suit, was and still is justly and truly indebted to
this deponent, as executor as aforesaid, in — pounds, for [goods sold
and delivered by the said *E. F.*, in his life-time, to the said *C. D.*, at his
request,] (or as the cause of action may be,) as appears by the books of
the said *E. F.*, and as this deponent verily believes, [or the deponent may
swear positively without reference to the deceased's books.]

[See 1 Chit. Ar. Pr. 487.]

14. *The like, by an Administrator.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.*, administrator of all and singular the goods,
chattels and credits, which were of *E. F.*, deceased, at the
time of his death, who died intestate, plaintiff, and *C. D.*
defendant.

A. B. of —, —, the above-named plaintiff, and administrator of
all and singular the goods, chattels and credits, which were of the said
E. F. deceased, at the time of his death, who died intestate, maketh oath
and saith, that *C. D.*, the above-named defendant, before and at the time
of the commencement of this suit, was and still is justly and truly indebted
to this deponent, as administrator as aforesaid, in — pounds, for [goods
sold and delivered by the said *E. F.*, in his life-time, to the said *C. D.*,
at his request,] (or as the cause of action may be,) as appears by the books

of the said *E. F.*, and as this deponent verily believes, [*or the deponent, if he can, may swear positively without reference to the deceased's books.*]

[*See 1 Chit. Ar. Pr. 487.*]

15. *Affidavit that a Writ of Summons has been issued before the Application for an Order to hold to Bail (a).*

In the Q. B. [*or C. P. or Exch. of Pleas.*]

Between *A. B.* plaintiff and *C. D.* defendant.

E. F., clerk to *G. H.*, of — (b), gentleman, attorney for the above-named plaintiff, maketh oath and saith, that on the — day of — last, this deponent, as clerk to the said *G. H.*, caused to be sued out of this honorable court a writ of summons, at the suit of the above-named plaintiff, against the above-named defendant, in an action on promises, [*or as the action may be,*] and a true copy of which is hereunto annexed.

E. F.

Sworn [*&c. ante, 207.*]

16. *Statements of the Cause of Action.*

[*The following statements of the cause of action are to be inserted in the affidavit, as the case and occasion require, and are to be altered accordingly. In cases of difficulty, get the affidavit drawn by your counsel or special pleader. See as to the mode of stating, and as to what is a sufficient statement of the cause of action, 1 Chit. Ar. Pr. 486 to 495.*]

Respecting Real Property.

For freehold premises sold.]—For a dwelling-house [*or "land"*] and premises, with the appurtenances, sold, conveyed and released, by this deponent to the said *C. D.*, at his request.

For copyhold premises surrendered.]—For a dwelling-house [*or "land"*] and premises, with the appurtenances, bargained, sold and surrendered, by this deponent to the said *C. D.*, at his request.

For leasehold premises assigned, &c.]—For a dwelling-house [*or "land"*] and premises, with the appurtenances, bargained, sold and assigned, by this deponent to the said *C. D.*, at his request, for the remainder of a term of years, then unexpired.

For rent of a house, farm, or land, &c.]—For the use and occupation of a dwelling-house [*or "farm," or "land,"*] and premises, with the appurtenances, of this deponent, held and enjoyed by the said *C. D.*, at his request, as tenant thereof to this deponent, for a long time then elapsed.

For rent of unfurnished apartments.]—For the use and occupation of rooms and apartments of this deponent, held and enjoyed by the said *C. D.* at his request, as tenant thereof to this deponent, for a long time then elapsed.

For rent of furnished apartments.]—For the use and occupation of rooms and apartments of this deponent, held and enjoyed by the said *C. D.* at his request, as tenant thereof to this deponent, for a long time then elapsed, together with furniture, linen, chattels, and other necessities of this deponent therein.

(a) As to the necessity for this affidavit see 1 Chit. Ar. Pr. 486.

(b) It is enough to state the mas-

ter's residence. *Strike v. Blanchard*, 5 Dowl. 216.

For use of furnished rooms, &c. firing, &c.]—For the use of rooms, apartments and furniture of this deponent by the said *C. D.*, held, used and enjoyed, at the said *C. D.*'s request; and for meat, drink, firing, candles, attendance, chattels and other necessities provided by this deponent for the said *C. D.*, at his request. [*See the form for Board and Lodging, post, 214.*]

For double rent.]—For double rent of a dwelling-house [*or "farm land"*] and premises of this deponent, held and enjoyed by the said *C. D.* as tenant thereof to this deponent, at the yearly rent of — pounds, payable quarterly, for one quarter of a year ending at — last, and which said quarter's rent accrued due after the expiration of a notice duly given to this deponent by the said *C. D.* that he the said *C. D.* would quit the said dwelling-house and premises on —. [*See 1 Chit. Ar. Pr. 133.*]

For the use of pasture land and eatage of grass.]—For the use of pasture land of this deponent, and the eatage of the grass and herbage thereon growing, let by this deponent to the said *C. D.* at his request, and by him had and used for depasturing [*cattle and sheep.*]

By outgoing tenant for improvements, fixtures, &c.]—For money due from the said *C. D.* to this deponent, for and in respect of the relinquishing and giving up of certain buildings, erections and improvements, made and erected by this deponent, in and upon certain lands and premises, with the appurtenances, by this deponent quitted, relinquished and given up to and in favour of the said *C. D.*, at his request.

For good-will of business.]—For the good-will of a business, relinquished and given up, by this deponent to the said *C. D.*, at his request.

For crops sold.]—For a crop of grass [*or "turnips," or "potatoes," as the case may be,*] sold by this deponent to the said *C. D.*, at his request, and by the said *C. D.* had and taken to his own use.

For tithes.]—For tithes issuing, and arising from, and out of lands and premises, in the occupation of the said *C. D.*, sold by this deponent to the said *C. D.*, at his request, and by the said *C. D.* taken and retained to his own use.

For wharfage and warehouse room.]—For the wharfage and warehouse room of goods and chattels, deposited, stowed, and kept, in and upon a wharf, warehouse and premises of this deponent, at the said *C. D.*'s request.

For standing of carriages.]—For the standing of carriages, kept and taken care of by this deponent for the said *C. D.*, at his request.

For fines on admission to copyhold premises.]—For reasonable fines, due and payable by the said *C. D.* to this deponent, as lord of the manor of —, in the county of —, for and on account of the said *C. D.*'s admission into certain customary tenements and premises, with the appurtenances, in and parcel of the said manor.

For tolls on carriages passing over a bridge.]—For tolls due and payable by the said *C. D.* to the said bailiffs [*&c.*], for the passage of loaded waggons and carts of the said *C. D.* over a bridge which the said bailiffs [*&c.*] and their predecessors have from time to time repaired and supported.

For tolls on goods brought into a market, and weighed, &c.]—For tolls due and payable by the said *C. D.* to the said mayor [*&c.*] for weighing at a beam of the said mayor [*&c.*] goods and chattels brought by the said *C. D.* to a market of and in the said borough, for sale, and by the said mayor [*&c.*] weighed at the said beam, at the said *C. D.*'s request.

For tolls on passing through a turnpike, and weighings.]—For tolls due and payable by the said *C. D.* to this deponent, as farmer and collector of the tolls payable at a turnpike gate, and at certain weighing machines erected on a turnpike road, for cattle of the said *C. D.* which travelled along the said road, and through the said gate; and for carriages of the said *C. D.*, which had travelled along the said road, and been weighed at the said machines.

For tolls on cattle sold in a market, by farmer and proprietor.]—For tolls due and payable by the said *C. D.* to this deponent, as farmer and proprietor of a market, and of the tolls and duties arising therefrom, for oxen, cows, calves, horses and cattle of the said *C. D.*, brought into the said market, and sold therein, whilst this deponent was so farmer and proprietor thereof.

Respecting Personal Property (a).

For goods sold and delivered.]—For goods sold and delivered by this deponent to the said *C. D.*, at his request.

For horses, cattle, &c.]—For horses, [*or "cattle," or "sheep," &c. according to the fact,*] sold and delivered by this deponent to the said *C. D.*, at his request.

For fixtures, &c.]—For fixtures and chattels, bargained, sold and relinquished by this deponent to the said *C. D.*, at his request (*b*).

For stock sold and transferred.]—For — pounds 3 per cent. Consolidated Bank Annuities, (*according to the fact,*) sold and transferred by this deponent to the said *C. D.*, at his request.

For board and lodging.]—For meat, drink, washing, lodging, and other necessities, provided by this deponent for the said *C. D.*, and at his request.

The like, for third persons.]—For meat, drink, washing, lodging and other necessities, provided by this deponent for divers persons, and for the said *C. D.*, at the said *C. D.*'s request.

For board and education.]—For board, maintenance and education of a child [*or "children,"*] and for clothes and other necessities for the same, provided by this deponent for the said *C. D.*, and at the said *C. D.*'s request. [*See the form, post, 217, for work, &c. as a school-master.*]

For horse-keep, stabling, &c.]—For horse-meat, stabling, care and attendance, provided and bestowed by this deponent, in feeding and keeping of horses for the said *C. D.*, and at the said *C. D.*'s request.

For agistment.]—For the agisting and feeding cattle, [*or "horses," or "sheep," &c.*] by this deponent for the said *C. D.*, at his request.

(a) See 1 Chit. Ar. Pr. 481, 488, 492, &c.

(b) Query, Whether defendant can be arrested in such a case? *Scrabble, yes.*

For covering mares.]—For the use of stallions of this deponent, in covering mares for the said *C. D.*, at his request.

For bulling cows.]—For the use of bulls of this deponent, in bulling cows for the said *C. D.*, at his request.

For the hire of horses, goods, &c.]—For the use and hire of horses and carriages, [or “ of lighters and other vessels,” or “ of goods and chattels,”] let to hire and delivered by this deponent to the said *C. D.*, at his request, and by the said *C. D.* had and used.

For the carriage of goods by land.]—For the carriage and conveyance of goods and chattels by this deponent for the said *C. D.*, at his request.

For passage-money.]—For the passage of the said *C. D.* and other persons, in and on board of a ship or vessel of this deponent, [or “ whereof this deponent was master and commander,”] from divers places to divers other places, at the said *C. D.*’s request.

For freight, primage, or average.]—For freight, primage, and average, payable by the said *C. D.* to this deponent, for the carriage and conveyance of goods and chattels in and on board of a ship or vessel of this deponent, [or “ whereof this deponent then was master and commander,”] from divers places to divers other places, at the said *C. D.*’s request.

For the tonnage of goods.]—For the tonnage of goods and chattels carried and conveyed by this deponent for the said *C. D.* in boats, barges and other vessels, at the said *C. D.*’s request.

For lighterage of goods.]—For lighterage of goods and chattels, conveyed by this deponent in lighters and other vessels, and shipped and landed out of the same for the said *C. D.*, at his request.

For demurrage.]—For the use of a ship or vessel of this deponent, [or “ whereof this deponent was master,”] retained and kept on demurrage and otherwise for a long time now elapsed, by the said *C. D.*, at the said *C. D.*’s request.

For money on exchange of horses.]—For money which the said *C. D.* agreed to pay to this deponent, together with a horse of the said *C. D.* in exchange for a horse of this deponent, delivered by the plaintiff to the said *C. D.*, at his request.

For Works and Fees, &c. (a)

For work and materials.]—For work done and materials for the same provided by this deponent for the said *C. D.*, at his request.

For work and materials, and for journies.]—For work done and materials for the same provided, and for journies made in and about that work by this deponent for the said *C. D.*, at his request.

For work with horses, carts, &c.]—For work done by this deponent and his servants, and with this deponent’s horses, carts and waggons, for the said *C. D.*, and at his request.

(a) See 1 Chit. Ar. Pr. 481, 488, 492, &c.

As a domestic or other servant.]—For wages due and payable from the said C. D. to this deponent, for the service of this deponent, done for the said C. D. as the hired servant of the said C. D. and on his retainer.

As a clerk.]—For salary due and payable from the said C. D. to this deponent, for the service of this deponent, done for the said C. D. as clerk to the said C. D., and on his retainer.

As an agent generally.]—For work done by this deponent as the agent of and for the said C. D. and on his retainer, and for commission and reward due and of right payable from the said C. D. to this deponent in respect thereof.

As a factor and agent.]—For work done by this deponent as the factor and agent of the said C. D. in and about the selling and disposing of goods and chattels of the said C. D., and in and about other business of the said C. D. and for the said C. D., and at his request.

As an insurance broker.]—For work done by this deponent as an insurance broker, in and about the writing, drawing, and making out of divers policies of insurance of divers ships and vessels, goods, wares, and merchandizes, and in and about the causing and procuring of divers persons to insure divers sums of money on the said ships and vessels, goods, wares, and merchandizes, for the said C. D., and at his request.

For premiums of insurance.]—For premiums due and payable by the said C. D. to this deponent for insuring ships and vessels, [or "goods," or "monies upon ships and vessels," or "upon goods,"] by this deponent, for the said C. D., at his request.

As a sailor.]—For wages due and payable from the said C. D. to this deponent, for the service of this deponent, by him done as a mariner on board of a certain ship called the —, for the said C. D. and on his retainer.

As a captain.]—For the wages of this deponent, and for his services done by him as master and commander of a certain ship called the —, for the said C. D. and on his retainer.

As an attorney and solicitor.]—For work done as an attorney and solicitor, and materials for the same provided by this deponent for the said C. D. upon his retainer, and for fees due and payable to this deponent in respect thereof.

As an agent against another attorney.]—For work done as the agent of and for the said C. D., and materials for the same provided by this deponent for the said C. D. upon his retainer and at his request, and for fees due and payable to this deponent in respect thereof.

As steward of a manor.]—For work done as steward of the court of a manor, to wit, the manor of —, and materials for the same provided by this deponent for the said C. D. upon his retainer, and for fees due and payable to this deponent in respect thereof.

As a surveyor.]—For the price and value of work done by this deponent as a surveyor for the said C. D., and at his request, and in and about other the business of the said C. D., and at his request, and for journies and attendances made and performed by this deponent in and about the business of the said C. D., and at his request, and for materials therein provided for the said C. D., and at his request.

As an auctioneer and appraiser.]—For work done by this deponent as an auctioneer and appraiser for the said C. D., and at his request, and in

and about other the business of the said *C. D.* and for the said *C. D.*, and at his request; and for divers journies and attendances made, performed and given by this deponent in and about the business of the said *C. D.*, and for the said *C. D.*, and at his request; and for materials provided therein by this deponent for the said *C. D.*, and at his request.

As a messenger.]—For work done by this deponent for the said *C. D.*, and at his request, as a messenger in and under a certain fiat of bankruptcy issued and awarded against one *E. F.*, and for journies and attendances by this deponent performed and given in and about the said business, and other the business of the said *C. D.*, and at his request.

As a schoolmaster.]—For work done by this deponent and his servants and teachers for the said *C. D.*, as a schoolmaster, in and about the teaching and instructing of divers infants and persons, at the request of the said *C. D.*, and for divers materials and other necessary things by this deponent provided and used in and about that work for the said *C. D.*, and at his request; and also for meat, drink, washing, lodging, chattels and other necessaries by this deponent found and provided for the said infants and persons, and at the like request of the said *C. D.*

As an apothecary and surgeon.]—For work and attendance done by this deponent, as a surgeon and apothecary, in and about the healing and curing of the said *C. D.* [and others] of divers diseases, disorders and maladies, at the request of the said *C. D.*, and also for medicines, chattels and other things administered, applied, and delivered, found and provided by this deponent, to and for the said *C. D.* [and others] at his like request.

As an undertaker of funerals.]—For the price and value of work done by this deponent as an undertaker of funerals, in and about the funeral of a certain person deceased, on the retainer and at the request of the said *C. D.*; and for divers hearses, coaches, horses, materials, chattels and other necessary things by this deponent used and applied in and about the furnishing and conducting of the said funeral, for the said *C. D.*, and at his request.

Respecting monies (a).

Money lent.]—For money lent by this deponent to the said *C. D.* at his request.

Money paid.]—For money paid by this deponent for the use of the said *C. D.* at his request.

Money received.]—For money received by the said *C. D.* for the use of this deponent.

Interest.]—For interest upon, and for the forbearance to the said *C. D.* by this deponent at the said *C. D.*'s request, for divers spaces of time before the commencement of this suit elapsed, of monies lent and advanced by this deponent to the said *C. D.* at his request, and which interest on the monies so lent and advanced the said *C. D.* contracted and agreed with this deponent to pay him.

[See 1 *Chit. Ar. Pr.* 481.]

Account stated.]—For money found to be due from the said *C. D.* to this deponent on an account stated between them.

(a) See 1 *Chit. Ar. Pr.* 481, 488, 492.

Where there are several Causes of Action(a).

If the plaintiff has two or more causes of action for which he intends arresting the defendant, they may be joined in the affidavit thus:—"In the sum of £——, for goods sold and delivered by this deponent to the said C. D. and at his request; and for work done by this deponent for the said C. D. and at his request; and also for money by this deponent lent to, and paid, laid out and expended for the said C. D. and at his request; and for money received by him the said C. D. to and for the use of this deponent, and for money found to be due from the said C. D. to this deponent on an account stated between them," *[or the affidavit may specify how much is due for goods, how much for work, and how much for money lent, &c.]*

On Promissory Notes(b).

*Payee against maker.]—*In £—— for principal money(c) due on a promissory note for £——(d), made by the said C. D. payable to this deponent, at a day before the commencement of this suit, *[or "on a promissory note, dated the —— day of ——, 18—, and made by the said C. D., whereby the said C. D. promised to pay —— after the date thereof, to this deponent, or order, the sum of £—— for value received."]*

*The like, on a note payable on demand.]—*In £—— for principal money(c) due on a promissory note for £——(d), made by the said C. D. payable to this deponent on demand.

*Second indorsee against maker.]—*In £—— for principal money(c) due to this deponent as indorsee of a promissory note, made by the said C. D. for the payment of £——(d), to the order of E. F. at a day before the commencement of this suit, and by the said E. F. indorsed to G. H., and by the said G. H. indorsed to this deponent.

*First indorsee against payee.]—*In £—— for principal money(c) due to this deponent as indorsee of a promissory note, made by E. F. for the payment of £——(d) to the order of the said C. D. at a day before the commencement of this suit, and by the said C. D. indorsed to this deponent, and which said note hath been refused payment by the said E. F.

*Indorsee against indorser.]—*In £—— for principal money(c) due to this deponent as indorsee of a promissory note, made by E. F. for the payment of £——(d) to the order of G. H. at a day before the commencement of this suit, and by the said G. H. indorsed to the said C. D., who indorsed the same to this deponent, and which said note hath been refused payment by the said E. F.

On Bills of Exchange(e).

*Drawer against acceptor.]—*In £—— for principal money(f) due on a bill of exchange, drawn by this deponent upon and accepted by the said C. D. for the payment of £——(d) to this deponent, at a day before the commencement of this suit.

(a) 1 Chit. Ar. Pr. 494.

(b) *Id.* 490.

(c) Or if interest be payable expressly by the note, and you intend arresting for it, also say, "in £—— for principal money and interest due on a promissory note" [&c. stating that the note was made payable with interest.]

(d) The affidavit would be bad, if it omitted the amount for which the

bill or note is drawn; *Foxell v. Petrie*, 1 N. & P. 227.

(e) See 1 Chit. Ar. Pr. 490.

(f) Or if interest be payable expressly by the bill, and you intend to arrest for it, also say, "in £—— for principal money and £—— for interest due on a bill," [&c. stating the bill to be payable with interest.]

Payee against acceptor.]—In £—— for principal money (a) due on a bill of exchange drawn by one E. F. upon and accepted by the said C. D. for the payment of £—— (b) to this deponent at a day before the commencement of this suit.

Indorsee against acceptor.]—In £—— for principal money (a) due to this deponent as indorsee of a bill of exchange, drawn by E. F. upon and accepted by the said C. D. for the payment of £—— (b) to the order of the said E. F. at a day before the commencement of this suit, and by him indorsed to this deponent.

Bearer against acceptor.]—In £—— for principal money (a) due to this deponent as the bearer of a bill of exchange, drawn by E. F. upon and accepted by the said C. D. for the payment of £—— (b) to the said E. F. or bearer, at a day before the commencement of this suit, and by him transferred and delivered to this deponent.

Payee against drawer on non-acceptance.]—In £—— for principal money (a) due on a bill of exchange drawn by the said C. D. upon E. F. for the payment of £—— (b) to this deponent, and which said bill hath been refused acceptance by the said E. F.

Payee against drawer on non-payment.]—In £—— for principal money (a) due on a bill of exchange, drawn by the said C. D. upon E. F. for the payment of £—— (b) to this deponent, at a day before the commencement of this suit, and which said bill hath been refused payment by the said E. F.

Indorsee against drawer on non-acceptance.]—In £—— for principal money (a) due to this deponent as indorsee of a bill of exchange, drawn by the said C. D. on E. F. for the payment of £—— (b) to the order of the said C. D., and by him indorsed to [G. H. who indorsed the same] to this deponent, and which said bill hath been refused acceptance by the said E. F.

Indorsee against drawer on non-payment.]—In £—— for principal money (a) due to this deponent as indorsee of a bill of exchange, drawn by the said C. D. on E. F. for the payment of £—— (b) to the order of the said C. D. at a day before the commencement of this suit, and by the said C. D. indorsed [to G. H. who indorsed the same] to this deponent, and which said bill hath been refused payment by the said E. F.

Second indorsee against second indorser.]—The affidavit as by a second indorsee against the drawer, as in the two preceding forms, will suffice, altering the names, &c.

On a foreign bill of exchange against drawer.]—A. B. of —, —, the above-named plaintiff, maketh oath and saith, that C. D. the above-named defendant, before the commencement of this suit was, and still is justly and truly indebted unto this deponent in the sum of [£105] for principal money (a) upon and by virtue of a bill of exchange drawn by the said C. D. in parts beyond the seas, that is to say, at [Paris in the kingdom of France], upon Messrs. G. & Co. for the payment of [—francs], (b) to the order of the said C. D. and by him indorsed to E. F., and by the said E. F. indorsed to this deponent, and which said bill has been refused payment by the said Messrs. G. & Co., and the same has

(a) Or if interest be payable expressly by the bill, and you intend to arrest for it, also say, "in £—— for principal money and £—— for interest

due on a bill," [&c. stating the bill to be payable with interest.]

(b) See ante, 218, note (d).

been duly protested for such non-payment before the commencement of this suit. And this deponent further saith, that the said sum of [— francs] in the said bill mentioned, at the time of the drawing the said bill, were and still are of the value of [£105] of lawful money of Great Britain.

On Checks.

Payee against maker.—In £— for principal money due to this deponent as the payee of a banker's check, drawn by the said C. D. on Messrs. E. F. & Co. for the payment of £— to this deponent or bearer, on demand, and which said check hath been refused payment by the said Messrs. E. F. & Co.

Bearer against maker.—In £— for principal money due to this deponent as the bearer of a banker's check, drawn by the said C. D. on Messrs. E. F. & Co. for the payment of £— to G. H. or bearer, on demand, and by the said C. H. transferred and delivered to this deponent, and which said check hath been refused payment by the said Messrs. E. F. & Co.

On Written Instruments not under Seal.

On a policy of insurance (a).—Upon and by virtue of a certain policy of insurance on a certain ship of this deponent, on a voyage from — to —, and which said policy was underwritten by the said C. D. for the said sum of £—. And this deponent further saith, that [*here state the loss, which may be thus*]—the said ship, on her voyage aforesaid, was captured and taken as prize by certain enemies of our lady the queen, which was one of the perils insured against in and by the said policy, and that a loss of one hundred per cent. on the said policy has since and before the commencement of this suit been adjusted and signed by the said C. D.

For freight, &c. on a charter-party (b).—Upon and by virtue of a charter-party of affreightment, bearing date, &c. [*date*], for and on account of the freight and hire of a certain ship or vessel called —, let to hire by this deponent to the said C. D., and by him taken in and used, for and during a certain voyage from divers places to divers other places.

On a guarantee (c).—A. B. of —, —, the above named plaintiff, maketh oath and saith, that on the — day of —, A.D. —, by a memorandum in writing, signed by C. D., the above-named defendant, and the said C. D. in consideration, as therein expressed, that this deponent would supply E. F. with goods on credit to the extent of £—, he the said C. D. promised this deponent that he the said C. D. would be answerable to him this deponent for the same. And this deponent saith, that he, confiding in the said promise of the said C. D., did afterwards [from time to time] supply and sell, and deliver to the said E. F. goods to the price of £— and upwards on credit. And although such credit hath long since and before the commencement of this suit elapsed, and the said E. F. hath been requested to pay this deponent the said sum of £—, yet the said E. F. hath not, nor hath the said C. D. as yet paid the said sum of £—, or any part thereof, to this deponent, and the same remains wholly due and unpaid. And this deponent further

(a) See 1 Chit. Ar. Pr. 481.

(b) *Id.* 489.

(c) *Id.* 481.

saith, that the said *C. D.* before the commencement of this suit was and still is justly and truly indebted to this deponent in the said sum of £——, upon and by virtue of his said promise and the premises aforesaid.

On Awards (a).

On an award on a parol or written submission not under seal.]—Upon and by virtue of a certain award, made by *E. F.* upon and by virtue of a certain submission made by this deponent and the said *C. D.* to the award, order and determination of the said *E. F.* of and concerning [all matters in difference] then depending between this deponent and the said *C. D.*, and upon and by virtue of which said reference the said *E. F.* awarded that the said *C. D.* should pay this deponent the sum of £—— at a certain day before the commencement of this suit.

On an umpirage.]—Upon and by virtue of a certain award or umpirage, made by one *E. F.* upon and by virtue of a certain submission made and entered into by this deponent and the said *C. D.* to the award, order and determination of *G. H.* and *I. K.*, of and concerning [all matters in difference] then depending between this deponent and the said *C. D.*, and thereby empowering the said *G. H.* and *I. K.*, in case they should not agree in making such award, to appoint a third person to award, determine and finally settle the said matters in difference; and whereupon the said *G. H.* and *I. K.* not agreeing in making the said award, and by virtue of the aforesaid power, by and with the consent and approbation of this deponent and the said *C. D.*, nominated and appointed the said *E. F.* as an umpire, to award, order and finally determine of and concerning [all matters in difference] between this deponent and the said *C. D.*; and upon and by virtue of which said reference the said *E. F.* awarded that the said *C. D.* should pay to this deponent the sum of £—— at a day before the commencement of this suit.

For money awarded under an order of nisi prius.]—For so much money awarded and ordered to be paid by the said *C. D.* to this deponent, at a certain day before the commencement of this suit, in and by a certain award in writing, bearing date [*&c. date of award*], and made by one *E. F.* in pursuance of a certain order of *nisi prius*, made by consent of this deponent and the said *C. D.* their counsel and attornies, in a certain cause lately depending in her majesty's court of ——, wherein this deponent was plaintiff and the said *C. D.* defendant; and also in the further sum of £——, being the costs of the said cause, which by the said order of *nisi prius* were ordered to be in the discretion of the said arbitrator, and by the said award were awarded and ordered to be paid by the said *C. D.* to this deponent; and which said sums of £—— and £—— are still wholly due and unpaid to this deponent.

On Bonds (b).

On a bond by the obligee.]—For principal and interest due on a bond, dated the —— day of ——, in the year of our Lord ——, and made and entered into by the said *C. D.* to this deponent, in the penal sum of ——, conditioned for the payment of £——, with lawful interest for the same, at a day before the commencement of this suit.

On an arbitration bond.]—Upon and by virtue of a bond, dated (*state the date*), and made and entered into by the said C. D. to this deponent, in the penal sum of £——, conditioned for the performance of an award to be made, as in the condition of the said bond is mentioned; and by which said award, since made in pursuance of the said condition, dated [&c.], the said C. D. was awarded to pay to this deponent the said sum of £—— upon a day before the commencement of this suit.

On an annuity bond.]—For the arrears of a certain annuity, due to this deponent, upon and by virtue of a bond, dated (*state the date*), and made and entered into by the said C. D. to this deponent, in the penal sum of £——, conditioned for the payment of the sum of £—— a year to this deponent, by the said C. D. during the life of the said C. D. [*if for the life of another person, say “during the life of E. F. who is still living.”*]

On a bond by assignee (a).]—Is justly and truly indebted to O. O., in trust for this deponent, in the sum of £——, for principal and interest due on a bond, dated (*state the debt*), and made and entered into by the said C. D. to the said O. O. in the penal sum of £——, conditioned for the payment of £——, with lawful interest for the same, at a day before the commencement of this suit, and the monies due and to grow due on which bond, and also such bond, as far as it lawfully might, have been duly assigned by the said O. O. to this deponent.

On a bond by assignee of bankrupt, where bond assigned to bankrupt.]—A. A. of ——, ——, one of the above-named plaintiffs, and one of the assignees of the estate and effects of B. B. a bankrupt, maketh oath and saith, that C. D., the above-named defendant, did, by his bond, dated (*state the date*), become bound to O. O. in the penal sum of £——, conditioned for the payment of the sum of —— and interest, at a certain day before the commencement of this suit: And this deponent further saith, that the said O. O. did, by a certain indenture dated (*state the date*), for a good and valuable consideration, assign, transfer and set over all his right and interest of, in, and to the said bond, together with the said bond itself, so far as he lawfully might, and all monies due and to grow due thereon, to the said B. B., who hath since become bankrupt; and that this deponent and the above-named C. C. are assignees of the estate and effects of the said B. B.: And this deponent further saith, that the said C. D. hath not paid the said sum of money mentioned in the condition of the said bond, either to this deponent, or, as this deponent believes, to the said O. O. or to the said B. B. or to the said C. C.: And this deponent further saith, that there was before and at the commencement of this suit and still is due and owing on the said bond, by and under the condition thereof, the sum of £—— for principal and interest, in which sum of £—— the said C. D., before and at the time of the commencement of this suit, was and still is justly and truly indebted unto this deponent and the said C. C. as assignees as aforesaid.

By executors of a surviving executor on a money bond.]—A. B. of ——, ——, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit was and still is justly and truly indebted to E. F. and G. H., the above-named plaintiffs, as executors of the last will and testament of D. D. deceased, (which said D. D. in his life-time, and at the time of his death, was surviving executor of the last will and testament of F. D. deceased), in the sum of

£—— for principal and interest due on a bond, dated (*state the date*), and made and entered into by the said C. D. to the said F. D. deceased, in his life-time, in the penal sum of £——, conditioned for the payment of the sum of £—— and interest, at a day before the commencement of this suit.

On Deeds (a).

On a deed generally.]—Upon and by virtue of an indenture [or “articles of agreement”] dated (*state the date*), and made between the said C. D. of the one part, and this deponent of the other part, whereby the said C. D. covenanted to pay to this deponent the [said] sum of £——, at a day before the commencement of this suit.

For rent on a lease.]—For the arrears of a yearly rent of £——, due and payable by the said C. D. to this deponent, upon and by virtue of an indenture of lease, dated (*state the date*), and made between this deponent of the one part, and the said C. D. of the other part.

For arrears of an annuity on annuity deed.]—For the arrears of an annuity or yearly sum of £——, granted by the said C. D. to this deponent, in and by an indenture, dated (*state the date*), and made between the said C. D. of the first part, this deponent of the second part [and E. F. of the third part], for and during the natural lives of W. W. and J. J. and the natural life of the survivor of them; which said W. W. and J. J. are now respectively living, [or, *if during the life of the defendant, say, “for and during the life of the said C. C.”*]

The like, in another form.]—Upon and by virtue of an indenture, dated (*state the date*), and made between the said C. D. of the one part, E. F. of the second part, and this deponent of the third part, whereby the said C. D. did grant unto this deponent a certain annuity or yearly sum of £——, for and during the natural life of the said C. D., and the said C. D. did thereby covenant duly to pay the same yearly and every year unto this deponent: And this deponent further saith, that two yearly payments of the said annuity, amounting in the whole to the said sum of £——, before and at the time of the commencement of this suit were and still are in arrear and unpaid.

For mortgage money and interest.]—For principal and interest due and owing from the said C. D. to this deponent, upon and by virtue of an indenture of mortgage, dated (*state the date*), and made between the said C. D. of the one part, and this deponent of the other part, whereby the said C. D. covenanted and agreed to pay the sum of £—— and interest to this deponent, at a certain day before the commencement of this suit.

The like by the assignee of mortgagee.]—For principal and interest due to him as assignee of an indenture of mortgage, dated (*state the date*), and made between the said C. D. of the one part, and one E. F. of the other part, whereby the said C. D. covenanted to pay the sum of £——, and interest, to the said E. F. at a day before the commencement of this suit past; and which said indenture of mortgage, with the money due thereon, have since and before the commencement of this suit been duly assigned by the said E. F. to this deponent, and the said sum of £——, with interest for and upon the same before and at the time of the commencement of this suit was and still is due and unpaid.

The like, by assignee of a mortgagee deceased.]—A. A. of —, —, maketh oath and saith, that C. D., the above-named defendant, before and at the time of the commencement of this suit was and still is justly and truly indebted unto E. F. and J. E., the above-named plaintiffs, as executors of the last will and testament of the said O. O. deceased, in trust for this deponent, in the sum of £—, for principal and interest due on an indenture of mortgage, dated (*state the date*), and made between the said C. D. of the one part, and the said O. O. in his life-time, of the other part, whereby the said C. D. covenanted and agreed to pay the sum of £— and interest (whereof the said sum of £— is part) to the said O. O. at a certain time therein mentioned and before the commencement of this suit past; and this deponent saith, that the money due on such mortgage, as well as the said mortgage, so far as the same lawfully might, were, before the commencement of this suit, duly assigned by the said O. O. in his life-time to this deponent.

On Judgments (a).

On a judgment of a superior court.]—Upon and by virtue of a judgment of this honourable court, [*or “of the court of Common Pleas at Westminster,” or “Exch. of Pleas at Westminster,”*] whereby this deponent, on the — day of —, A. D. —, recovered against the said C. D. the sum of £—, by reason of the said C. D.’s non-performance of certain promises (*b*) before then made by him to this deponent, exclusive of and over and above this deponent’s costs, charges, and expenses by him about his suit in that behalf expended.

On a judgment by executor.]—Upon and by virtue of a judgment of this honourable court, [*or “of the court of Common Pleas at Westminster, or “Exch. of Pleas at Westminster,”*] for the sum of £— recovered on the — day of —, A. D. —, by the said O. O. in his lifetime against the said C. D., exclusive of and over and above the said O. O.’s costs, charges and expenses by him about his suit in that behalf expended, which said judgment is still in force and unsatisfied, as appears by the record of the said judgment, and as this deponent verily believes.

Against an executor, on a judgment by plaintiff, after a devastavit (a).]—Upon and by virtue of a certain judgment recovered on the — day of —, A. D. —, by this deponent, in this honourable court, [*or “in the court of Common Pleas at Westminster,” or “Exch. of Pleas at Westminster,”*] against the said C. D. as executor of E. F. deceased, exclusive of and over and above the defendant’s costs, charges and expenses by him about his suit in that behalf expended; and that the sheriff of —, to a writ of *fieri facias* issued upon the said judgment, hath returned *nulla bona*, and a *devastavit* by the said C. D. of the effects of the said E. F. deceased, to the amount of the said sum of £— (*the sum for which you intend arresting.*)

(a) As to when you may hold to bail on a judgment, see 1 Chit. Ar. Pr. 482, 490.

(b) Or if in debt or other form of action alter this accordingly. It may

not be absolutely requisite to state for what the judgment was recovered.

(a) See 1 Chit. Ar. Pr. 482; a judge’s order is requisite. See *id.*

On Debt on a Statute (a).

On 9 Anne, c. 14, for money won at rouge et noir.]—A. B. of —, —, the above-named plaintiff, maketh oath and saith, that C. D. is justly and truly indebted to this deponent in the sum of £100, by force of the statute in such case made and provided, being a statute made and passed in the ninth year of the reign of her late majesty Anne, formerly Queen of England, intituled “An Act for the better preventing of excessive and deceitful Gaming,” for so much money lost by this deponent to the said C. D., and by the said C. D. won of this deponent by playing at games at cards, at different sittings, within the space of three months next before the commencement of this suit, in sums exceeding the sum of £10 at each and every of their sittings, contrary to the form of the statute, and which said sum of £100 hath been paid by this deponent to the said C. D., and by him the said C. D. illegally received within the said space of three months next before the commencement of this suit.

The like, in another form.—For so much money lost by this deponent to the said C. D. within three months next before the commencement of this suit, by playing with the said C. D. at a certain game of cards called rouge et noir: And this deponent further saith, that he lost not less than the sum of £10 at each of the times or sittings, at which the said sum of £— was so lost by him the said C. D. at the said game as aforesaid, and that the said sum of £—, so lost by him as aforesaid, was paid and delivered by this deponent to the said C. D. before the commencement of this suit.

In Trover (b).

In trover for a bill (c).]—A. B. of —, —, the above-named plaintiff, maketh oath and saith, that on or about the — day of — last, he, this deponent, delivered to the above-named defendant C. D. a bill of exchange, dated (*state the date*), drawn by this deponent on and accepted by A. A. for the sum of £—, and payable — months after the date thereof, being the property of this deponent, to be discounted, or procured to be discounted by the said C. D. for this deponent, and the proceeds to be handed over by the said C. D. to this deponent. And this deponent further saith, that he hath frequently demanded of the said C. D. to discount or procure to be discounted the said bill for this deponent, and to hand over the proceeds thereof to this deponent, to do either of which the said C. D. hath wholly refused, and hath converted and disposed of the said bill to his own use; and the said bill hath not been paid either by the said A. A. or this deponent, nor hath any part thereof: And this deponent further saith, that he did, on the — day of — instant, serve the said C. D. with a true copy of the notice hereunto annexed, (*annex a copy of the notice demanding the bill, &c. of defendant,*) [or “did deliver a true copy of the notice hereto annexed, to a person who told deponent he was the servant of the said C. D. at his the said C. D.’s house, situate at — aforesaid,”] but that the said C. D. hath not delivered the said bill of exchange, or the amount thereof, or any part thereof, to him this deponent, and still detains the

(a) See 1 Chit. Ar. Pr. 494. See a form of affidavit for double rent, *ante*, 213.

(b) As to the form in general, see 1 Chit. Ar. Pr. 493.

(c) As to when trover is the proper remedy in such a case, see *Atkins v. Owen*, 6 N. & M. 309; 4 Ad. & El. 819, S. C. When not, *Palmer v. Jarman*, 2 M. & W. 282.

same from him. (State any other facts which will strengthen the application for the judge's order.)

In Trespass (a).

For an assault.]—*A. B.* of —, —, the above-named plaintiff, maketh oath and saith, that on or about the — day of — last, *C. D.* the above-named defendant, without any provocation whatever, seized and laid hold of this deponent, and with great force and violence cruelly struck, knocked down, and kicked this deponent (*describe the assault fully*), so that this deponent hath since been in a serious state of illness, and that the damage this deponent hath sustained thereby amounts to the sum of £— at the least. And this deponent further saith, that he hath been informed and verily believes, that the said *C. D.* is a person in good circumstances, and well able to make this deponent satisfaction for the said ill-treatment.

For mesne profits (b).]—*A. B.* of —, —, the above-named plaintiff, maketh oath and saith, that this deponent was the lessor of the plaintiff in a certain action of ejectment brought in this honourable court, wherein *John Doe*, on the demise of *A. B.* (this deponent) was plaintiff, and *Richard Roe* was defendant; and that before and at the time of the first demise laid in the declaration in the said action, being the — day of —, A. D. —, and from thence until the — day of, &c. *C. D.* the above-named defendant was possessed of and occupied the premises comprised in the said declaration in ejectment, and took and received the profits thereof. And this deponent further saith, that the said plaintiff in the said action of ejectment recovered judgment by default against the casual ejector as of — term last, whereon a writ of *habere facias possessionem* was issued, by virtue of which the sheriff of the said county entered upon the said premises on or about the said — day of, &c. and put this deponent into possession of the same. And this deponent further saith, that the profits of the said premises for and during the time the said *C. D.* so occupied and was possessed of the said premises were reasonably worth the sum of £—, to which this deponent is entitled as the lessor of the plaintiff, in the said ejectment. And that [*here state any dilapidations, if any, committed to or omitted on the premises by defendant, "and which cannot be replaced under the expense of £— at the least"*], and that this deponent hath paid the costs of the said ejectment, amounting to the sum of £—; and that no sum or sums of money have been paid to this deponent, or for his use, either for the occupation of the said premises during the time aforesaid, [for the said injuries and damages,] or for the said costs of the said ejectment. And this deponent further saith, that the said *C. D.* is justly and truly indebted (c) unto this deponent in the aforesaid several sums, making together the sum of £—, as and for the mesne profits of the said premises, [for the loss sustained by this deponent in replacing the said injuries and damages,] and for the said costs: And this deponent further saith, that he verily

(a) As to this affidavit, see 1 Chit. Ar. Pr. 484.

(b) See 1 Chit. Ar. Pr. 484.

(c) This form was prepared by an eminent pleader now at the bar; but query whether it would not be more

proper to aver that the plaintiff is "damnified" to the amount, rather than that the defendant is indebted in it. See *Imlay v. Ellefsen*, 2 East, 453. 1 Chit. Ar. Pr. 493.

believes, that unless he obtain the security of bail from the said C. D. he the said C. D. will not satisfy to this deponent his debt so due to him on account of the meane profits of the said premises, [and for the loss sustained by this deponent in replacing the said several injuries and damages,] and for the said costs. (*State any other facts which will strengthen the application for the judge's order.*)

2. JUDGE'S ORDER TO HOLD DEFENDANT TO BAIL.

The Order.

E. J. S. } Upon reading the affidavit of J. J. S., I do order and direct
v. } that the plaintiff be at liberty, within [ten] days from the date
R. B. } hereof, to issue out of her majesty's Court of Exchequer of
Pleas one or more writ or writs of *capias*, into one or more different counties, as the case may require, against R. B. the defendant in this cause, indorsed to hold him to bail for the sum of — pounds, pursuant to the statute. Dated the — day of —, 1840.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 497.]

3. DISCHARGE OF DEFENDANT FROM CUSTODY.

The Summons.

E. J. S. } Let the plaintiff, his attorney, or agent, attend me at my
v. } chambers in Rolls Garden to-morrow, at eleven of the clock in
R. B. } the forenoon, to show cause why the bail-bond given herein should not be delivered up to be cancelled, [or "why the defendant should not be discharged out of custody as to this action,"] upon entering a common appearance for irregularity specified in the statement annexed. [If the ground relied on be irregularity in the proceedings, &c., annex to the summons and copy served a statement of the irregularities complained of, or state them in the summons.] Dated the — day of —, 1840.

[Judge's name.]

[See 1 Chit. Ar. Pr. 500.]

4. THE PROCESS.

1. *Præcipe for the Writ of Capias.*

Middlesex (the county, &c. to the sheriff, &c. of which the writ is to be directed.)—*Capias* for A. B. [or "A. B. and others"] against C. D. [or "C. D. and others"] in an action on promises [or "of debt," or "of covenant," or "of detinue," or "of trespass," or "on the case," as the

cause of action may be, and as it is to be expressed in the intended writ.]
Bail for £——, by order of [Mr. Baron Maule.]

P. A. attorney, [or, if in person, "A. B. in person."]

The —— day of ——, 1840.

[See 1 Chit. Ar. Pr. 520.]

2. *The Writ of Capias.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith. To the sheriff (a) of ——, greeting. We command you that you omit not (b) by reason of any liberty in your bailiwick (c), but that you enter the same and take C. D. (defendant's name (d)), ——; (his residence or supposed residence) (e), (or, if more than one defendant ordered to be held to bail (f) name them and the residence or supposed residence of each accordingly), if he [or "they"] shall be found in your bailiwick, and him [or "them"] safely keep until he [or "they"] shall have given you bail or made deposit with you according to law, in an action on promises [or "of debt," or "covenant," or "detinue," or "of trespass," or "on the case," as the cause of action may be] (g), at the suit of A. B. —— (h) (or, if more than one plaintiff, name them all,) or until the said C. D. (name all the defendants ordered to be held to bail) —— shall, by other lawful means, be discharged from your custody. And we do further command you, that on execution hereof you do deliver a copy hereof to the said C. D. (name all the defendants ordered to be held to bail). And we hereby require the said C. D. (name all the defendants ordered to be held to bail) to take notice, that within eight days after the execution hereof on him [or "them"], inclusive of the day of such execution, he [or "they"] should cause special bail to be put in for him [or "them"] in our court of Queen's Bench [or "C. P." or "Exch. of Pleas,"] (i) to the said action, and that in default of so doing, such proceedings may be had and taken as are mentioned in the warning written or indorsed hereon. And we do further command you, that immediately after the execution hereof you do return this writ to our said court of Queen's Bench [or "C. P." or "Exch. of Pleas,"] together with the manner in which you shall have executed the same, and the day of the execution thereof; or if the same shall remain unexecuted, then that you do so return the same at the expiration of one calendar month from the date hereof, or sooner if you shall be thereto required by order of the said court or by any judge thereof. Witness—(if in Q. B. or C. P.

(a) As to the direction of the writ, see *ante*, 20, n. (a).

(b) As to the effect of the non omitas clause, see 1 Chit. Ar. Pr. 508.

(c) See as to districts, parcel of one county but surrounded by another, *ante*, 148, n. (c).

(d) As to the statement of defendant's name, see 1 Chit. Ar. Pr. 510.

(e) As to the description of defendant's residence, see 1 Chit. Ar. Pr. 514.

(f) As to describing all the defendants, see 1 Chit. Ar. Pr. 514.

(g) As to the statement of the form of action, see 1 Chit. Ar. Pr. 516.

(h) As to the statement of the plain-

tiff's name, and the number of the plaintiffs, see 1 Chit. Ar. Pr. 510, 514. When suing in *autre-droit*, you need not, it seems, in Q. B. or Exchequer, describe him as such. *Id.* But the court of C. P. having in some cases decided differently, it would be safest to describe him; and see the forms, *post*, Book 3, Part 2, Chap. 5.

(i) Where the court was wrongly stated, an omission to put in bail was held to be no ground for an attachment against the sheriff for not bringing in the body. *Mayhew v. Headley*, 6 Dowl. 629.

here insert the name of the chief justice, or if in the Exchequer, the name of the chief baron. If the office of chief justice or chief baron be vacant, then insert the name of the senior puisne judge of the court), at Westminster, [or as the case may be,] the — day of —, in the year of our Lord — (a) (the day of issuing the writ.)

[The following Memoranda must be subscribed to the Writ:] (b)— This writ is to be executed within one calendar month from the date thereof, including the day of such date, and not afterwards.

A Warning to the Defendant (b).

If a defendant, having given bail on the arrest, shall omit to put in special bail as required, the plaintiff may proceed against the sheriff or on the bail-bond.

[The following Indorsement must also be made on the Writ:]—Bail for £— by order of (naming the judge making the order,) dated this — day of —, 1840] (c).

This writ was issued by P. A. (plaintiff's attorney's name in full), of (place of abode in full), attorney for the plaintiff [or plaintiffs] within named (d). [Or if the writ was sued out by an attorney as agent for another attorney in the country, say, "This writ was issued by P. A. (the agent's name), of —, as agent for P. P. of —, attorney for the plaintiff [or plaintiffs] within-named"] (e). [Or, if the writ was sued out by the plaintiff in person, say, "This writ was issued in person by the plaintiff (or, if more than one, name them all accordingly) within named, who resides at" (mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such there be)] (f).

There is also another indorsement to be made by the officer executing the writ, of the day of executing it, which see post, 233. But this of course cannot be made until the writ is executed.

3. Writ of Capias into a County Palatine (g).

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith. To the chancellor of our county palatine of Lancaster [or "Durham"] (h), or his deputy there, greeting:— We command you, that by our writ, under the seal of our said county palatine, to be duly made and directed to the sheriff of our said county palatine, you command the said sheriff that he omit not, by reason of any liberty in his bailiwick, but that he enter the same, and take C. D. —, if he shall be found in his bailiwick, and him safely keep until he shall have given him bail, or made deposit with him according to law, in an action on promises [or "of debt," &c. see ante, 228] at the suit of A. B.,

(a) As to this date and the teste, see 1 Chit. Ar. Pr. 517.

(b) As to these memoranda and warnings, and the consequences of the omission or any defect therein, see 1 Chit. Ar. Pr. 518.

(c) As to this indorsement for bail, see 1 Chit. Ar. Pr. 518.

(d) As to the indorsement of the attorney's name and residence, see 1 Chit.

Ar. Pr. 518, 519.

(e) R. M. 3 Will. 4, r. 9.

(f) As to this indorsement, see 1 Chit. Ar. Pr. 518, 519.

(g) Observe the notes to the preceding form. See 1 Chit. Ar. Pr. 508, 509.

(h) See as to Durham, ante, 21, n. (b); and 1 & 2 Vic. c. 110, s. 3.

or until the said C. D. shall by other lawful means be discharged from his custody: And that you further command him, that on execution thereof he do deliver a copy thereof to the said C. D.; and that the said writ do require the said C. D. to take notice, that within eight days after execution thereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in our court of Queen's Bench [or "C. P." or "Exch. of Pleas"] to the said action; and that in default of so doing, such proceedings may be had and taken as are mentioned in the warning written or indorsed hereon; and that you further command the said sheriff, that immediately after the execution thereof he do return that writ to our said court, together with the manner in which he shall have executed the same, and the day of the execution thereof; or that if the same shall remain unexecuted, then that he do so return the same at the expiration of one calendar month from the date thereof, or sooner, if he shall be thereto required by order of the said court, or by any judge thereof. Witness (see the preceding form, ante, 228), at Westminster, the — day of —, in the year of our Lord 1840. (Add the memoranda, and also the indorsements, as directed in the preceding form, p. 229.)

[See 1 Chit. Ar. Pr. 508, 509.]

4. Demand on an Attorney to state whether the Writ was issued by him.

[See a form, ante, 17.]

5. Order of Judge upon Plaintiff's Attorney to state Plaintiff's Abode, &c.

B. } Upon hearing the attornies or agents on both sides, I do order
v. } and direct that Mr. P. A. (the plaintiff's attorney) shall within —
D. } days from the service of this order declare in writing to Mr. D. A.,
the defendant's attorney, the profession, occupation, or quality and place
of abode of the plaintiff herein, on pain of being guilty of a contempt of
this honourable court. Dated the — day of —, 1840.

(Judge's signature.)

[N.B. A summons for this purpose may be readily framed from this order.]

6. Statement thereunder, of Abode, &c. of Plaintiff.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff against C. D. defendant.

The above-named plaintiff is a —, and his place of abode is No. — in — street, in the parish of —, in the county of —, (taking care to give such a description as will not mislead the defendant.) Dated the — day of —, 1840. Yours, &c.

P. A. plaintiff's attorney [or "agent."]

To Mr. D. A. defendant's attorney [or "agent."]

7. Affidavit to obtain Defendant's Discharge out of Custody, on the ground of the Writ not having been issued with Authority of Attorney whose Name is indorsed on it.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff against C. D. defendant.

C. D. of —, —, the above-named defendant, and D. A. of —

his attorney [or "clerk to," &c.] severally make oath and say; and first this deponent C. D. for himself saith, that he was on the — instant [or "last"] arrested upon a writ of capias, issuing out of this honourable court, and a true copy thereof, as served upon him, is hereunto annexed (*annex it* :) And this deponent D. A. for himself saith, that he did, as the attorney for and on behalf of the above-named C. D., on the — instant, demand in writing of P. A., the attorney whose name is indorsed on the said writ, for him to declare forthwith whether such writ was issued by him or with his authority or privity: And thereupon the said P. A. did then [or on the — day of —] declare to this deponent that the said writ was not issued by him the said P. A., or with his authority or privity. And these deponents further say, that neither of them are acquainted with the place of abode of the above-named A. B. (*if this be the fact*), and that [*&c. here state such other facts as may induce the court or judge to grant the order* :] And these deponents further say (*if the fact*) that no bail has yet been put in in this action, and that the said C. D. is now in custody in the gaol of — [or "of the sheriff of —"], under colour and by virtue of the said writ of capias.

Sworn [*&c. ante*, 207.]

C. D.

D. A.

[*Sec 1 Chit. Ar. Pr. 56, 51.*]

8. *Order of Judge thereon, for Defendant's Discharge out of Custody.*

B. } Upon reading the affidavit of the defendant and Mr. D. A., and
v. } it appearing to me that the writ issued in this cause, and whereon
D. } the defendant was arrested, was not issued by Mr. P. A. attorney,
whose name is indorsed thereon, or with his authority or privity, I do
order that a rule be drawn up for the immediate discharge of the de-
fendant out of the custody of the sheriffs of London [or "sheriff of
Middlesex," or "marshal of the Marshalsea," or "warden of the Fleet,"]
as to this action, [or, *if the defendant is in custody of any other sheriff
but those of London or Middlesex, then say, "out of the custody of the
sheriff of —, as to this action, by writ of supersedeas,"*] on the de-
fendant's entering a common appearance thereto. Dated the — day
of —, 1840.

(*Judge's signature.*)

9. *Rule thereon.*

B. } On —. Upon reading the order of the Honourable
v. } Mr. Justice —, dated [*&c.*], and it thereby appearing
D. } that the writ issued in this cause, and whereon the defend-
a prisoner. } ant was arrested, was not issued by Mr. P. A. attorney,
whose name is indorsed thereon, or with his authority or privity, and
the said C. D. having entered a common appearance in the said action;
it is ordered that the defendant be discharged out of the custody of the
sheriffs of London [or "sheriff of Middlesex," or "warden of the Fleet,"]
as to this action, [or, *if the defendant is in custody of any other sheriff
but those of London or Middlesex, then say, "out of the custody of the
sheriff of —, as to this action, by writ of supersedeas."*]

By the Court.

[*Sec 1 Chit. Ar. Pr. 51, 519.*]

V. THE ARREST—BAIL-BOND—DEPOSIT WITH THE SHERIFF, &c.

1. *Warrant to Arrest.*

Middlesex (*the county, &c. to the sheriff of which the writ is directed.*) S. S. esquire, and J. S. esquire, sheriff of the county aforesaid. To B. B. and J. D. my bailiffs, greeting: By virtue of the queen's writ issued out of her majesty's court of Q. B. (a) [*or "C. P." or "Exch. of Pleas,"*] bearing date at Westminster the — day of —, 1840, to me directed, I command you, each and every of you, jointly and severally, that you or any of you omit not, by reason of any liberty in my bailiwick (b), but that you enter the same and take C. D. if he shall be found in my bailiwick, and him safely keep until he shall have given me bail, or made deposit with me according to law, in an action on promises [*or "of debt," &c. as the action is,*] at the suit of A. B., or until the said C. D. shall, by other lawful means, be discharged from my custody; and I do further command you, and each and every of you, jointly and severally, that on execution hereof you do deliver to him the copy of the said writ herewith delivered to you: And I do further command you, or any of you, that immediately after the execution hereof you do certify to me the manner in which you shall have executed the same, and the day of the execution hereof, so that I may return the same to her majesty's said court, or that, if the same shall remain unexecuted, then that you do so return this my warrant at the expiration of one calendar month from the date of the said writ, or sooner, if thereto required. Dated the — day of —, 1840.

(*Seal of sheriffs.*)

Judge's order for £—.

Writ issued by P. A. of —,

plaintiff's attorney [*or "by the said A. B. in person."*]

Before you arrest the defendants, beware they are not privileged, as ambassadors, or servants to ambassadors, or any otherwise privileged or protected.

This warrant is allowed for one defendant, and no more; and to be executed by no bailiffs but those who have given the said sheriff security (c).

Memorandum subscribed to the above-named Writ.

This writ [*&c. here copy the memoranda and warning as in the writ*] (c).
[*As to this warrant, see 1 Chit. Ar. Pr. 524.*]

2. *Mandate to the Sheriff of the County Palatine of Lancaster.*

Victoria, [*as in the form, ante, 228.*] To the sheriff of Lancashire, greeting: We command you that you omit not by reason of any liberty in

(a) It is not necessary to specify the court, *Astley v. Goodjer*, 2 Dowl. 619; 2 C. & M. 682; 4 Tyr. 414, S. C.

(b) If the defendant reside in a district or place parcel of one county, but wholly situate in and surrounded by another—or if the writ be directed to

the sheriff of the surrounding county, the form is here different. See *ante*, 148, n. (c).

(c) These memoranda, except as to the duration of the writ, are not in the form in Tidd's Supplement of Forms, 274.

your bailiwick, but that you enter the same and take C. D. of —, if he shall be found in your bailiwick, and him safely keep [&c. as in the writ of capias to the teste, commanding the sheriff in the second person to do what is required to be done by the writ, and the mandate is tested as follows:] Witness ourself at Lancaster, the — day of —, in the — year of our reign. [Let it contain the memorandum subscribed to the writ and warning, as in the preceding form.]

[See 1 Chit. Ar. Pr. 509.]

3. Indorsement on Writ of Execution thereof.

C. D. was arrested by me X. Y. on the within writ, on —, the — day of —, 1840. X. Y.

If there be more than one defendant make such an indorsement for each.

[See 1 Chit. Ar. Pr. 534.]

4. Bail-Bond.

Know all men by these presents, that we C. D. (the defendant arrested) of —, —, E. F. of —, —, and G. H. of —, —, are held and firmly bound to S. S. esquire, sheriff of the county of —, in the sum of — (usually double the sum indorsed on the writ (a)) of lawful money of Great Britain, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, and each of us for himself, in the whole, our and every of our heirs, executors, and administrators, firmly by these presents, sealed with our seal. Dated the — day of —, in the year of our Lord 1840.

Whereas the above-bounden C. D. was on the — day of — taken by the said sheriff, in the bailiwick of the said sheriff, by virtue of the queen's writ of capias issued out of her majesty's court of Queen's Bench, [or "C. P." or "Exch. of Pleas,"] bearing date at Westminster the — day of —, to the said sheriff directed and delivered, against the said C. D. [and I. K. &c. as in the writ,] in an action on promises, [or "of debt," &c. as in the writ,] at the suit of A. B. And whereas a copy of the said writ, together with every memorandum or notice subscribed thereto, and all indorsements thereon, was on the execution thereof delivered to the said C. D. And whereas he is by the said writ required to cause special bail to be put in for him in the said court to the said action within eight days after execution thereof on him, inclusive of the day of such execution. Now the condition of this obligation is such, that if the said C. D. do cause special bail to be put in for him to the said action in her majesty's said court, as required by the said writ, then this present obligation to be void and of no force, otherwise to stand and remain in full force, vigour and effect.

Sealed and delivered in
the presence of W. W.

C. D. (L. s.)
E. F. (L. s.)
G. H. (L. s.)

[See 1 Chit. Ar. Pr. 536.]

5. Assignment of, and Proceedings on.

See the Forms, post, 239.

(a) See 1 Chit. Ar. Pr. 537.

6. *Affidavit for Defendant to obtain out of Court Money deposited with Sheriff in lieu of Bail.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff against C. D. defendant.

D. A. of —, attorney for the above-named defendant, maketh oath and saith, that the said defendant, on or about the — day of — instant [or "last"], was arrested by an officer of the sheriff of —, at the suit of the above-named plaintiff, by virtue of a certain writ of capias, dated, &c. issuing out of this honourable court, and indorsed for bail for £—: and that the said defendant thereupon, in lieu of giving bail to the said sheriff, deposited with the sheriff's officer aforesaid the sum of £—, being the sum indorsed on the said writ together with the sum of ten pounds, to answer costs*. And this deponent further saith, that he hath searched at the office of —, esquire, one of the masters [or "with the proper officer"] of this honourable court, and finds that the said several sums have been paid into the hands of the said last-mentioned officer, [except a deduction of —.] And this deponent further saith, that bail above has since been duly put in in this action for the said defendant, and duly perfected [or, if the defendant was rendered, then, instead of the last sentence, insert the following one: "And this deponent further saith, that the said defendant hath been duly rendered in discharge of his bail in this action, at the suit of the above-named plaintiff."]

D. A.

Sworn [&c. ante, 207.]

The motion paper for this purpose should be indorsed—To move upon the within affidavit for a rule to show cause why the defendant should not be at liberty to take out of court the sum of £—, deposited by him with the sheriff in lieu of bail, bail above having since been put in and perfected, [or "the defendant having since been duly rendered in discharge of his bail in this action."]

[See 1 Chit. Ar. Pr. 539.]

7. *Rule for Defendant to take Money out of Court.*

On —, the — day of —, in — term, — Victoria B. } Upon reading the rule made in this cause, on —, the affidavit
v. } of D. A., and no cause being shown to the contrary, it is ordered
D. } that the sum of £— paid into the hands of the sheriff of the
county of — by the defendant for the debt, on his arrest in this cause, in lieu of bail, and since brought into court by the said sheriff, pursuant to the statute in that case made and provided, be paid out of court to the defendant, or his attorney; the said defendant having put in and perfected bail above, [or "having surrendered himself in discharge of his bail to the custody of —,"] in this action. Upon the motion of Mr. —.

By the Court.

[See 1 Chit. Ar. Pr. 540.]

8. *Affidavit for Plaintiff to obtain out of Court the Money deposited with Sheriff in lieu of Bail.*

[As in the form, ante, 233, No. 6, to the*, stating the deponent to be plaintiff's attorney, and then thus:—And this deponent further saith, that bail above has not been put in in this action for the said defendant,

[or "that bail above has been put in in this action for the said defendant, but that the same has not been perfected."]

P. A.

Sworn [&c. *ante*, 207.]

The motion paper for this purpose should be indorsed thus :—To move upon the within affidavit for a rule to show cause why the plaintiff should not be at liberty to take out of court the sum of £—— deposited by the defendant with the sheriff in lieu of bail, bail above not having been put in, [or "bail above having been put in, but not perfected."]

[See 1 Chit. Ar. Pr. 540.]

9. Rule thereon for Plaintiff to take Money out of Court.

B. } Upon reading the rule [&c. as in form, *ante*, 234, No. 7,] It is or-
v. } dered, that the sum of £—— paid into the hands of the sheriff of
D. } the county of —— by the defendant, on his arrest in this cause, in lieu of bail, and since brought into court by the said sheriff, pursuant to the statute in that case made and provided, be paid out of court to the plaintiff or his attorney, together with such sum as one of the masters shall allow for costs on taxation, out of the sum of *ten* pounds, deposited and brought into court as aforesaid, for the said costs; the said defendant not having put in and perfected bail, [or "having put in but not perfected bail." Upon the motion of Mr. ——.

By the Court.

VI. PROCEEDINGS AGAINST THE SHERIFF.

1. Rule to return the Writ in Term.

[Same as *ante*, 168, No. 42, *mutatis mutandis*.]

2. Judge's Order to return the Writ in Vacation.

[Same as *ante*, 169, No. 43, *mutatis mutandis*.]

3. Return of *Non est inventus*.

The within-named C. D. is not found in my bailiwick.

The answer of S. S. esq., sheriff.

4. Returns of *Cepi corpus, et paratum habeo, &c.*

On the —— day of ——, A.D. 1840, I took the within-named C. D. in my bailiwick, and forthwith delivered to him a copy of this writ, and him safely kept until he gave me bail [or "made deposit with me"] according to law in the within-named action, as by this writ is required, as I am within commanded.

The answer of S. S. esq., sheriff.

On the —— day of ——, A.D. 1840, I took the within-named C. D.

and forthwith delivered to him a copy of this writ, and* whose body I have ready, as within I am commanded (a).

The answer of S. S. esq., sheriff.

[*As in the last to the**, and then thus:] whose body remains in the prison of our lady the queen, under my custody (a).

The answer of S. S. esq., sheriff.

[*As in the last to the**, and then thus:] whose body I have ready, as within I am commanded; but the within-named *E. F.* is not found in my bailiwick.

The answer of S. S. esq., sheriff.

5. *Return of Rescue.*

By virtue of this writ to me directed, I made my certain warrant in writing, under my seal of office, to *B. B.* and *C. B.* my bailiffs, jointly and severally, to take and arrest the within-named *C. D.*; by virtue of which warrant the said *B. B.* and *C. B.* afterwards, and before the expiration of the time limited for executing the said writ, to wit, on the — day of —, at —, in my county, and within my bailiwick, took and arrested the within-named *C. D.* according to the exigency of the said writ, and safely kept him in their custody, until *O. O.* of —, and divers other persons to my said bailiffs unknown, on —, at — aforesaid, with force and arms assaulted and ill-treated my said bailiffs, and the said *C. D.* out of the custody of my said bailiffs then and there rescued, and the said *C. D.* then and there, with force and arms, rescued himself, and escaped out of the custody of my said bailiffs, against the peace of our lady the now queen; and afterwards the said *C. D.* is not found in my bailiwick.

The answer of S. S. esq. sheriff.

6. *Return of Discharge on Supersedeas.*

By virtue of this writ to me directed, I on &c. took the within-named *C. D.* and safely kept him in her majesty's prison in and for the county of —, until afterwards, to wit, on —, by virtue of a certain other writ of our said lady the now queen to me directed, and to this writ annexed, I caused the said *C. D.* to be delivered out of the said prison; wherefore I cannot have the body of the said *C. D.* before our said lady the queen, [or in *C. P.* "before the justices of our said lady the queen," or in *Exch.* "before the barons of our said lady the queen,"] at the day and place within contained, as within I am commanded.

The answer of S. S. esq. sheriff.

7. *Return of Delivery over on Habeas Corpus to Marshal.*

By virtue of this writ to me directed, I on &c. took the within-named *C. D.* and safely kept him in her majesty's prison, in and for the county of —, until afterwards, to wit, on —, I received her said majesty's writ of habeas corpus cum causâ, commanding me to have the body of the said *C. D.* before the right honourable (*name of the chief justice*), her said majesty's chief justice, assigned to hold pleas in the court of our lady

(a) The return of *cepi corpus et paratum habeo* means, that the sheriff has taken the defendant, and that he is at large upon bail. The sheriff

ought to return the defendant in custody if that be the fact. See per Littleale, J. 4 N. & M. 708.

the now queen, before the queen herself, at his chambers situate in Serjeant's Inn, Chancery Lane, London, immediately after the receipt of that writ: by virtue of which said writ, and in obedience thereto, I had the body of the said *C. D.* with the said last-mentioned writ, and the return of the within cause, mentioned in a certain schedule thereunto annexed, before her said majesty's chief justice, at his chambers aforesaid, on the — day of — last, who then received of me the body of the said *C. D.* and committed him to the prison of the marshal of the Marshalsea of our said lady the queen, before the queen herself, and altogether discharged and exonerated me from further keeping the said *C. D.*; wherefore I cannot have the body of the said *C. D.* before our said lady the queen, at the day and place within contained, as within I am commanded.

The answer of S. S. esq. sheriff.

8. *Return of Languidus in prison.*

By virtue of this writ to me directed, I on &c. took the within-named *C. D.* who remains in her majesty's prison of —, under my custody, so weak and infirm that, without great peril and danger of his life, I cannot have his body before the lady the queen, [or in *C. P.* "before the justices of the lady the queen," or in *Exch.* "before the barons of our lady the queen."] at the day and place within contained, as within I am commanded.

The answer of S. S. esq. sheriff.

[See 1 *Chit. Ar. Pr.* 546, 551, and a form of return to final process, ante, 199.]

9. *Affidavit of Service of Rule to return Writ, &c.*

[Same as ante, 169, No. 44, *mutatis mutandis.*]

10. *The like, of Service of Judge's Order, &c.*

[Same as ante, 169, No. 45, *mutatis mutandis.*]

11. *Rule for Attachment for not returning the Writ.*

[Same as ante, 169, No. 46, *mutatis mutandis.*]

12. *Rule to bring in the Body in Q. B.*

On —, in — term, — Victoria.
B. v. D. It is ordered, that the sheriffs [or "late sheriffs"] of London shall within four days next after notice of this rule to be given to their secondaries, [or "that the sheriff" (or "late sheriff") of the county of — shall within four days (in *London or Middlesex*, or eight days in any other county) next after notice of this rule to be given to his under-sheriff or deputy,"] peremptorily bring into court the body of the defendant.

Side Bar.

By the Court.

[See 1 *Chit. Ar. Pr.* 551.]

13. *The like, in C. P.*

Side Bar.

In the Common Pleas.

On —, in — term, — Victoria.

B. } It is ordered, that the sheriff [or "late sheriff"] of the county of
 v. } —, within four days [in *London or Middlesex*, or eight days in
 D. } *any other county*,] next after notice of this rule to be given to his
 under-sheriff, do peremptorily bring into this court the body of the de-
 fendant*.

By the Court.

In the Treasury Chamber, at the instance of the plaintiff.

14. *The like, in Exchequer.*

On —, in — term, — Victoria.

A. B. against C. D.

Side Bar.—It is ordered, that the sheriff [or "late sheriff"] of the
 county of — do peremptorily bring here into court the body of the said
 defendant whom he has taken and detained in his custody by virtue of
 her majesty's writ of *capias*, issued between the said parties, as the said
 sheriff has charged himself by his return made on the said writ, within
 four days [in *Middlesex*, or eight days in *any other county*] next after
 notice of this rule to be given him or his under-sheriff or deputy*.

By the Court.

ROSE.

15. *Judge's Order in Vacation to bring in the Body (a).*

B. } I order that the sheriff, [&c. proceed as in the three preceding
 v. } forms, Nos. 13, 14, 15, respectively, according to the court in which
 D. } the action is, to the asterisk*, adopting the word "order" instead of
 the word "rule."]

[Judge's signature.]

[See 1 Chit. Ar. Pr. 553.]

16. *Affidavit of Service of Rule to bring in the Body, &c.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff against C. D. defendant.

C. C. of —, clerk to P. A. gentleman, attorney for the above-
 named plaintiff, maketh oath and saith, that he this deponent did, on the
 — day of — instant [or "last"] personally serve, [&c. as *ante*, 169,
 No. 44.] And this deponent further saith, that no bail above has been
 put in for the defendant in this cause, [or "that bail above has been put
 in for the defendant in this cause, but that the same has not been per-
 fected;" adding in the *Common Pleas*, "this deponent having this day
 searched with the proper officer of the court for that purpose."]

Sworn, [&c. *ante*, 207.]

C. C.

17. *The like, of Judge's Order, &c.*[A form may be readily framed from the last, and that *supra*.]

(a) This order is obtained without any affidavit. 1 Chit. Ar. Pr. 550.

18. *Rule for Attachment for not bringing in the Body.*

On —, in — term, — Victoria.
 B. } Upon reading the rule [or "order"] made in this cause, on —,
 v. } and the affidavit of C. C., it is ordered that a writ of attachment do
 D. } issue against the sheriff [or "late sheriff"] of the county of —,
 for his contempt in not bringing into court the body of the defendant,
 pursuant to the said rule [or "order."] Upon the motion of Mr. —.
 By the Court.

[See 1 Chit. Ar. Pr. 555, 556.]

19. *Attachment against the Sheriff for not bringing in the Body or not returning the Writ in Q. B., C. P., or Exch.*

[Same as ante, 170, Nos. 47, 48, 49, mutatis mutandis.]

20. *Rule on Coroner to return Attachment in Q. B., C. P., or Exch.*

[Same as ante, 171, Nos. 50, 51, mutatis mutandis.]

21. *Attachment against Coroners directed to Elisors.*

[Same as ante, 171, No. 52, mutatis mutandis.]

22. *Rule for Habeas Corpus to bring in the Body of Sheriff.*

[Same as ante, 171, No. 53.]

23. *Habeas Corpus thereon.*

[Same as ante, 171, No. 54.]

VII. PROCEEDINGS UPON THE BAIL-BOND.

1. *Assignment of the Bail-bond.*

I, the within-named sheriff of —, have, at the request of A. B. the plaintiff, also within-named, assigned to him the said A. B. the within-written bail-bond, and all benefit and advantage arising therefrom, pursuant to the statute in that case made and provided. In witness whereof I have hereunto set my hand and seal of office this — day of —, 1840.
 S. S. Sheriff.

Signed, sealed and delivered by the
 within-named sheriff, in the pre-
 sence of

W. W.
 T. W.

[See 1 Chit. Ar. Pr. 559.]

2. Declaration on the Bail-bond.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, in the year of our Lord 1840.

— (venue in this action) to wit:—*A. B.* assignee of *J. H.* esquire, and *R. P.* esquire, sheriff of the county of [Middlesex], according to the form of the statute in such case made and provided, by *P. A.* his attorney, complains of *C. D.*, *J. S. B.* and *J. L.*, who have been summoned to answer the said *A. B.* in an action of debt (*a*), and he demands of them the sum of £— (*the penalty in the bond*), which they owe to and unjustly detain from him. For that whereas the plaintiff, on the — day of —, in the year of our Lord (*date of the writ of capias*), according to the form of the statute in such case made and provided, and pursuant to the order of Sir —, knight, (*name of the judge who made the order to hold to bail*), one of the justices of her majesty's court, before the queen herself (*or as the case may be*), sued and prosecuted out of the court of Q. B. [or "C. P." or "Exch. of Pleas"] at Westminster, a certain writ of our said lady the queen, called a Writ of Capias, against the said *C. D.*, directed to the sheriff of —, and dated at Westminster the day and year aforesaid, by which said writ our said lady the queen commanded the said sheriff that (*b*) he should omit not by reason of any liberty in his bailiwick, but that he should enter the same and take the said *C. D.* if he should be found in his bailiwick, and him safely keep until he should have given him bail, or made deposit with him, according to law, in an action of debt (*as in the writ of capias*) at the suit of the plaintiff, or until the said *C. D.* should, by other lawful means, be discharged from his custody; and our said lady the queen thereby required the said *C. D.* to take notice, that within eight days after the execution thereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him, in our said lady the queen's court of Q. B. [or "C. P." or "Exch. of Pleas"] at Westminster, to the said action, and that in default of his so doing such proceedings might be had and taken as were mentioned in the warning thereunder written or indorsed thereon: And our said lady the queen did further command the said sheriff, that immediately after the execution thereof he should return the said writ to our said lady the queen's said court, together with the manner in which he should have executed the same, and the day of the execution thereof; and that if the same should remain unexecuted, then that he should so return the same at the expiration of one calendar month from the date thereof, or sooner, if he should be thereto required by order of the said court, or by any judge thereof (*c*). Which said writ afterwards and before the delivery thereof to the said sheriff to be executed as is hereinafter mentioned, to wit, on the day and year first aforesaid, was marked and indorsed for bail for £— by order of the said sir —, knight, (*the judge who made the order to hold to bail*), according to the form of the statute in such case made and provided (*d*). And which said writ so indorsed, afterwards, to

(*a*) There is no occasion to state in this part of the declaration the form of action, though it is usual to do so.

(*b*) Let the following averments correspond with the writ in the original action.

(*c*) Some forms have been adopted here, setting out also the memoranda,

on the writ, saying, "and by certain memoranda then and there subscribed to the said writ, it was made known that that writ was to be executed, &c." but this appears unnecessary, and should be avoided.

(*d*) Some forms have here stated other indorsements on the writ; but this appears unnecessary.

wit, on the day and year first aforesaid, was delivered to the said *J. H.* and *R. P.*, who then and from thence, until and at and after eight days after the execution of the said writ on the said *C. D.* as hereafter mentioned, were sheriff of the said county of [Middlesex,] in due form of law to be executed. By virtue of which said writ the said *J. H.* and *R. P.* so being sheriff as aforesaid, afterwards, to wit, on the — day of —, A. D. — (*date of bail-bond,*) and within his bailiwick, as such sheriff, executed the said writ and took and arrested the said *C. D.* by his body, and then had and detained him in his custody as such sheriff, at the suit of the plaintiff, for the cause aforesaid. And the said *C. D.* being so arrested and in custody of the said *J. H.* and *R. P.* so being sheriff as aforesaid, by virtue of the said writ, at the suit of the plaintiff, the said *J. H.* and *R. P.* afterwards and within eight days next after the execution of the said writ as aforesaid, inclusive of the day of such execution, to wit, on the day and year last aforesaid, and within their bailiwick, as such sheriff, took bail for the said *C. D.*'s causing special bail to be put in for him to the said action in her majesty's said court, as required by the said writ, and according to the form of the statute in such case made and provided; and on that occasion the said *C. D.*, *J. S. B.*, and *J. L.* then, to wit, on the day and year last aforesaid, by their certain writing obligatory, commonly called a bail-bond, sealed with the respective seals of the said *C. D.*, *J. S. B.* and *J. L.*, and now shown to the said court of our said lady the queen, before the queen herself [*or in C. P.* "before her justices of the bench," *or in Exchequer*, "before the barons of her said Exchequer,"] the date whereof is the same day and year last aforesaid, acknowledged themselves to be held and firmly bound to the said *J. H.* and *R. P.* so then being sheriff as aforesaid, as such sheriff, in the penal sum of £— of good and lawful money of Great Britain, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, with and under a certain condition thereunder written, whereby (*let the following correspond with the condition of the bond,*) after reciting that the said *C. D.* was, on the — day of — then instant, taken by the said sheriff in the bailiwick of the said sheriff, by virtue of the queen's writ of *capias* issued out of her majesty's court of —, bearing date at Westminster the — day of — then instant, to the said sheriff directed and delivered, against the said *C. D.* in an action of debt (*let this be according to the fact*) at the suit of the plaintiff, being the said writ above-mentioned and set forth, and that a copy of the said writ, together with every memorandum or notice subscribed thereto, and all indorsements thereon, was on execution thereof duly delivered to the said *C. D.*, and that he was by the said writ required to cause special bail to be put in for him in the said court to the said action within eight days after the execution thereof on him, inclusive of the day of such execution, it was conditioned, that if the said *C. D.* should cause special bail to be put in for him to the said action in her majesty's said court, as required by the said writ, that then the said obligation should be void and of no force, or otherwise should stand and remain in full force, vigour and effect, as by the said writing obligatory, and the condition thereof, reference being thereunto had, may more fully and at large appear. And the plaintiff in fact saith, that the said *C. D.* did not cause special bail to be put in for him to the said action in her majesty's said court, as required by the said writ in the condition of the said writing obligatory mentioned, according to the exigency of the said writ, but therein wholly failed and made default, whereby the said writing obligatory became forfeited; and the plaintiff further saith, that the said writing obligatory being so forfeited, and the money therein specified remaining unpaid and unsatisfied to the

said sheriff, they, the said *J. H.* and *R. P.*, so being sheriff as aforesaid, afterwards, to wit, on the — day of —, in the year aforesaid (*date of assignment*), at the request of the plaintiff, by an indorsement on the said writing obligatory, duly made and sealed with the seal of office of the sheriff of the said county of —, assigned the said writing obligatory to the plaintiff, according to the form of the statute in such case made and provided; as by the said assignment indorsed on the said writing obligatory as aforesaid, and to the said court of our said lady the queen now here shown, the date whereof is the day and year last aforesaid, may more fully appear. By means whereof, and by force of the statute in such case made and provided, an action hath accrued to the plaintiff, as assignee of the said *J. H.* and *R. P.*, so being sheriff as aforesaid, to demand and have of and from the defendants the sum of £—— above demanded; yet the defendants (although often requested so to do) have not nor hath either of them yet paid the sum above demanded, or any part thereof, to the said *J. H.* and *R. P.* before the said assignment, or to the plaintiff, assignee as aforesaid, or either of them, since the said assignment, but have hitherto wholly neglected and refused so to do, and still do neglect and refuse to pay the same or any part thereof; to the damage of the plaintiff, as assignee as aforesaid, of £10, and therefore he brings his suit, &c.

VIII. SETTING ASIDE OR STAYING PROCEEDINGS AGAINST THE SHERIFF,
OR UPON THE BAIL-BOND.

1. *Affidavit to set aside a regular Attachment, at the Instance of Defendant.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

England. *The Queen against the Sheriff of —,*
(in the cause *A. B. v. C. D.*) (a).

C. D. of —, —, maketh oath and saith, that this deponent was, on or about the — day of — last, [or “instant,”] arrested at the suit of the above-named plaintiff, upon a writ of *capias*, sued out in this action; and that he this deponent did on that day [or “on the — day of — last,”] give a bail bond to the officer of the sheriff of —, by whom he was so arrested, and was thereupon discharged out of custody. And this deponent further saith, that special bail hath since been put in in this action, for this deponent, and which said bail hath [this day] been duly perfected (b). [Or where the defendant has been rendered, then instead of stating that bail has been put in and justified, as above, state the render thus: And this deponent further says, that bail above has since been put in in this action for the deponent, and this deponent did, on the — day of — last, duly render himself in discharge of his said bail in this action at the suit of the above-named plaintiff.”] And this deponent further says, that on — an attachment issued out of this honourable court against the said sheriff of — for not having obeyed the rule [or

(a) As to this title, see 1 Chit. Ar. Pr. 570; 2 *id.* book 4, part 1, ch. 35.

(b) It is not necessary to state that

a rule for the allowance of bail has been obtained. *Crosby v. Innes*, 5 Dowl. 566.

"order"] to bring in the body of this deponent, as this deponent hath heard and verily believes. And this deponent further saith, that he hath a good defence to this action upon the merits, as he is advised and verily believes (a).

Sworn [&c. ante, 207.]

C. D.

[See 1 Chit. Ar. Pr. 570.]

2. *The like, on the Part of the Bail to the Sheriff (b).*

In the Q. B. [or "C. P." or "Exch. of Pleas."] (b)

England. The Queen against the Sheriff of ———
(in a cause of A. B. v. C. D.)

B. B. of ———, ———, and T. B. of ———, ———, severally (c) make oath and say, that C. D., the above-named defendant, was, on or about the ——— last, arrested in this action at the suit of the above-named plaintiff, and that these deponents, together with the said C. D., after the said arrest, on ———, duly executed a bail-bond to the sheriff of ——— in this action; and the said C. D. was thereupon discharged out of custody. And these deponents further say, that special bail [&c. here state the putting in and perfecting of special bail, or the render of the defendants, as in the preceding form.] And these deponents further say, that on ——— last an attachment issued out of this honourable court against the said sheriff of ——— for not having obeyed the rule [or "order"] to bring in the body of the said C. D., as these deponents have heard and verily believe. And these deponents further say, that this application is really and truly made on the part of these deponents, as bail for the said C. D., at their own expense, and for their own indemnity only (d), and without any collusion with the said C. D. the above-named defendant.

Sworn [&c. ante, 207.]

B. B.

T. B.

[See 1 Chit. Ar. Pr. 570.]

3. *The like, on the Part of the Sheriff's Officer.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

England. The Queen against the Sheriff of ———,
(in a cause of A. B. v. C. D.)

B. B. of ———, officer of the sheriff of ———, maketh oath and saith that on ——— last, by virtue of a warrant to him directed, this deponent arrested C. D. the above-named defendant, and kept and detained him in his custody until ———, when a bail-bond was duly executed, conditioned for the said C. D. putting in special bail in this action, whereupon this deponent discharged the said C. D. out of his custody. And this deponent further saith, that special bail [&c. here state the putting in and perfecting of special bail, or the render of the defendant, as to which see the form, ante, 242, No. 1.] And this deponent further saith, that on ——— last an attachment issued out of this honourable court against the said sheriff of ———, for not having obeyed the rule [or "order"] to bring in the body of the said C. D., as this deponent hath heard and verily believes.

(a) This is sufficient when sworn by the defendant himself. *Crosby v. Inns*, 5 Dowl. 566.

(b) This affidavit is now required in all the courts. See 1 Chit. Ar. Pr. 569, 570.

(c) It seems an affidavit by both the bail is not absolutely requisite. See *R. v. Sheriff of Middlesex*, 3 Dowl. 186.

(d) See *R. v. Sheriff of Cheshire*, 3 M. & W. 606.

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And this deponent further saith, that this application is really and truly made on the part of this deponent, as officer of the said sheriff of —, at his this deponent's own expense, and for his indemnity only (a), and without any collusion with the said C. D. the above-named defendant.

Sworn [&c. ante, 207.]

[See 1 Chit. Ar. Pr. 570.]

4. *The like, on the Part of the Sheriffs of London, where Defendant has rendered.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

England. *The Queen against the Sheriff of —,*
(in a cause of A. B. v. C. D.)

S. C., of the Secondaries' Office, Coleman-street, London, clerk to the secondaries of London, maketh oath and saith, that a writ of *capias*, bearing date the — day of — last, was issued out of this honourable court, directed to the sheriffs of London, commanding them to take the above-named C. D. to answer the above-named A. B., and indorsed for bail for £ —. And this deponent further saith, that on — the said C. D., with two sureties, gave a bail-bond to the said sheriffs of London. And this deponent further saith, that on — the sheriffs were served with a rule [or "order"] to return the said writ of *capias*; and having returned *cepi corpus* thereon, a rule [or "order"] to bring in the body of the said C. D. was served on the said sheriffs on the — day of — last [or "instant":] And this deponent further saith, that an attachment has since issued against the said sheriffs of London for not bringing into court the body of the said C. D.; of which notice was given at the Secondaries Office on —. And this deponent further saith, that on the said — day of —, special bail were put in for the said C. D., on behalf of the said sheriffs of London; and that the said C. D. was, on the said — day of —, duly rendered into the custody of the marshal of the Queen's Bench prison, [or "warden of the Fleet,"] in discharge of his bail in the above cause; and that notice of such render was on the same day duly served on the said A. B.'s attorney in this cause, as this deponent is informed and believes. And this deponent further saith, that this application is really and truly made on the part of the said sheriffs of London, at the expense of the secondaries for the said city of London (b), and for their indemnity only (a), and without any collusion with the said C. D.

Sworn [&c. ante, 207.]

S. C.

[1 Chit. Ar. Pr. 570.]

5. *Affidavit to set aside regular Proceedings on Bail-Bond, at the Instance of Defendant.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff v. C. D. defendant (c).

C. D. of —, —, maketh oath and saith, that this deponent was, on or about the — day of — last [or "instant,"] arrested at the suit of the above-named plaintiff, upon a writ of *capias* sued out in this action; and that he this deponent on that day, [or "on the — day of — last,"] gave a bail-bond to the officer of the sheriff of —, by whom

(a) See *R. v. Sheriff of Cheshire*, 3 P. C. 174.
M. & W. 606.

(b) *R. v. Sheriff of Surrey*, 3 Dowl.

(c) As to this title, see 1 Chit. Ar. Pr. 570.

he was so arrested, and was thereupon discharged out of custody. And this deponent further saith, that special bail, [&c. *here state the putting in and perfecting of special bail, or the rendering of defendant, as in the form, ante, 242, No. 1.*] And this deponent further saith, that the said A. B., the above-named plaintiff, on or about the — day of — last, [or “instant,”] took an assignment of the said bail-bond, as this deponent hath heard and verily believes, and hath since commenced an action upon the same against this deponent. And this deponent further saith, that he hath a good defence upon the merits to the action in which he was so arrested as aforesaid, as he this deponent is advised and believes (a).

Sworn [&c. *ante*, 207.]

C. D.

[See 1 Chit. Ar. Pr. 570.]

6. *The like, on the Part of the Bail to the Sheriff (b).*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”] (b).

A. B. plaintiff v. C. D. defendant.

B. B. of —, —, and T. B. of —, —, severally make oath and say, that C. D., the above-named defendant, was, on or about the — day of — last [or “instant”], arrested in this action, at the suit of the above-named plaintiff; and that these deponents, together with the said C. D. after the said arrest, on the — day of — last [or “instant”], duly executed a bail-bond to the sheriff of —, in this action, and the said C. D. was thereupon discharged out of custody. And these deponents further say, that special bail [&c. *here state the putting in and perfecting of special bail or the rendering of defendant, as to which see the form, ante, 242, No. 1.*] And these deponents further severally say, that the said A. B. the above-named plaintiff, on or about the — day of — last [or “instant”], took an assignment of the said bail-bond, as these deponents have heard and verily believe, and hath since commenced an action upon the same against these deponents. And these deponents further severally say, that this application is really and truly made on the part of these deponents, as bail for the said C. D. at their own expense, and for their indemnity only (c), without any collusion with the said C. D. the above-named defendant.

B. B.

Sworn [&c. *ante*, 207.]

T. B.

[See 1 Chit. Ar. Pr. 570.]

7. *The like, on the Part of a Sheriff's Officer.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

A. B. plaintiff v. C. D. defendant.

B. B. of —, officer of the sheriff of —, maketh oath and saith, that on or about the — day of — last [or “instant”], by virtue of a warrant to him directed, this deponent arrested C. D., the above-named defendant, and kept and detained him in his custody until the — day of — last [or “instant”], when a bail-bond was duly executed, conditioned for the said C. D. putting in special bail in this action; where-

(a) This is sufficient when the affidavit is sworn by the defendant himself. *Crosby v. Innes*, 5 Dowl. 566.

(b) This affidavit is now required in the Exchequer, though it was for-

merly otherwise. See 1 Chit. Ar. Pr. 569, 570.

(c) See *R. v. Sheriff of Cheshire*, 3 M. & W. 606.

upon this deponent discharged the said *C. D.* out of his custody. And this deponent further saith, that special bail [*&c. state the putting in and perfecting of special bail or the rendering of defendant, as to which see the form, ante, 242, No. 1.*] And this deponent further saith, that the said *A. B.*, the above-named plaintiff, on or about the — day of — last [*or "instant"*], took an assignment of the said bail-bond, as this deponent hath heard and verily believes, and hath since commenced an action upon the same against the said *C. D.* and his bail to the said sheriff. And this deponent further saith, that this application is really and truly made on the part of this deponent, as officer of the said sheriff of —, at his this deponent's own expense, and for his indemnity only (*a*), and without collusion with the said *C. D.*, the above-named defendant.

Sworn [*&c. ante, 207.*]

B. B.

IX. BAIL, IN TOWN.

1. *Affidavit to obtain leave to put in more than two Bail, where the Sum is large.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

A. B. plaintiff v. *C. D.* defendant.

C. D. of —, the above-named defendant, maketh oath and saith, that he hath been arrested in this action upon a writ of *capias* issued out of this honourable court, indorsed for bail for [3000*l.*]; and this deponent further saith, that the said alleged debt being so large, this deponent is unable to procure two persons who are respectively able and willing to swear that he is worth double the sum sworn to in this action, over and above what will pay his just debts: but this deponent saith, that *B. B.* of —, —, is able and willing to become and justify as bail for this deponent in this action to the amount of double the sum of 600*l.*, and that *T. B.* of —, —, is able and willing to become and justify as bail for this deponent in this action to the amount of double the sum of 600*l.*, and that *K. B.* of —, —, is also able and willing to become and justify as bail for this deponent in this action to the amount of double the sum of 2000*l.* as the said *B. B.*, *T. B.*, and *K. B.* have respectively informed this deponent, and as he verily believes.

Sworn, [*&c. ante, 207.*]

C. D.

[*See 1 Chit. Ar. Pr. 573, 574.*]

2. *Summons for Time to put in &c. Bail.*

B. B. } Let the plaintiff's attorney, or agent, attend me at my chambers
v. } in Rolls' Garden, to-morrow, at — of the clock in the forenoon
D. } [*or "afternoon"*], to show cause why the defendant should not have
— days further time to put in bail [*or "to put in and justify bail," or*
"to justify bail," or "to add and justify his bail"], in this cause.

[*Judge's name.*]

[*See 1 Chit. Ar. Pr. 577.*]

(a) See *R. v. Sheriff of Cheshire*, 3 M. & W. 606.

3. Order thereon.

B. } Upon hearing the attornies or agents on both sides, I order that
v. } the defendant shall have ——— days further time to put in bail [or
D. } “to put in and justify bail,” or “to add and justify two bail”] in
this cause; the said defendant consenting that the plaintiff shall be in the
same situation by the course of the court as if bail had been put in and
had justified in due time, [or “without prejudice to any proceedings on
the part of the plaintiff in the mean time.”] Dated this ——— day of ———,
A.D. 1840.

[Judge's or Baron's signature.]

4. Recognizance of Bail, in Q. B. or Exch. (a)

Ye (addressing the bail by their names) do jointly and severally under-
take, that if C. D. shall be condemned in this action, at the suit of A. B.,
he shall satisfy the costs and condemnation, or render himself to the cus-
tody of the marshal of the Marshalsea of the Court of Queen's Bench [or
in the Exch. “render himself a prisoner to the Fleet Prison for the same”]
or ye will do it for him. Are ye content?

5. The like, in C. P.

You (addressing the bail by their names) do jointly and severally ac-
knowledge to owe unto A. B. the sum of £—— a-piece, (b) to be levied
upon your several goods and chattels, lands and tenements, upon condi-
tion that if C. D. be condemned in the said action, he shall pay the con-
demnation, or render himself a prisoner to the Fleet Prison for the same:
and if he fail so to do, you (again addressing the bail by their names) do
undertake to do it for him.

6. Bail-piece in Q. B.

In the Q. B. On the ——— day of ———, A.D. 1840.
—— (the county in the writ) to wit. C. D. (c) is delivered to bail
upon a *cepi corpus* [or “C. D. having been arrested is delivered to bail”]
to B. B. of ———, ———,
and
T. B. of ———, ———.

Bail for £—— by order of) At the suit of A. B. (d)
—— (name of judge who made)
the order to hold to bail).
D. A. of ———)
Attorney for defendant.

Taken and acknowledged, condi-
tionally, at my chambers in Rolls'
Garden, this ——— day of ———,
A.D. 1840, before me,

(Judge's signature.)

[See 1 Chit. Ar. Pr. 578, 579.]

(a) See the forms of entering of
recognizances of bail, post, Chap. 13.

(b) The sum sworn to.

(c) As to the names, &c. see 1 Chit.
Ar. Pr. 578.

(d) In the courts of Queen's Bench
and Common Pleas the bail do not
sign bail-piece, as they do in the Court
of Exchequer.

10. *Bail-piece, in Exchequer.*

In the Exch. of Pleas.

On the — day of —, A.D. 1840.

— (the county in the writ) to wit, C. D. [or “having been arrested”] is delivered to bail upon a *cepi corpus* to B. B. of —, —, and T. B. of —, —,

Bail for £— by order of — (name of the judge who made the order to hold to bail).
D. A. of —,
attorney for defendant.

At the suit of A. B.

(The bail are to sign their names here.) { B. B.
T. B.

Taken and acknowledged conditionally at my chambers in Rolls’ Garden, this — day of —, A.D. 1840, before me,
(Baron’s signature.)

11. *Notice of Bail having been put in.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

Between A. B. plaintiff and C. D. defendant.

Take notice that special bail was this day put in (a) in this cause for the defendant, before the Honourable Mr. Justice [or “Baron”] —, at his chambers in Rolls’ Garden, London, and the names, additions and particulars of and relating to such bail are as follows. The said bail are John Styles, of No. —, — Street, —, in the county of —, —, and who is a house keeper there, and John Nokes, of No. —, — Place, in the said county, —, and who is a house keeper there, and who is also a freeholder of a messuage and land in the parish of —, in the county of —, and which is now in the possession of T. T. as his tenant; [let these statements agree precisely with the facts, and see fully as to the description, 1 Chit. Ar. Pr. 580, 581,] and the said John Styles hath resided continually for upwards of the last six months at No. —, — Street aforesaid; and the said John Nokes, in the months of — last, did reside at No. —, — Street, —, in the county of —, and in that month he removed from thence to No. —, —, in the county of —, where he resided continually from, on or about the — day of the said month of —, until on or about the — day of — last, and on or about that day he removed from thence to No. —, — Street aforesaid, and from that time the said John Nokes hath there resided continually till this day. [See fully as to these statements, 1 Chit. Ar. Pr. 580, 581. If you accompany the notice of bail with an affidavit of their sufficiency according to the rules of court mentioned, and as pointed out in 1 Chit. Ar. Pr. 583, add the following: “And further take notice, that the said, &c. (names of the bail,) have duly made and sworn to the affidavits which accompany this notice for your perusal, and copies

(a) It was formerly requisite in the Exchequer to state the filing of the bail-piece in the Office of Pleas with

the sworn clerks, but such statement is no longer requisite. See 1 Chit. Ar. Pr. 582.

of which affidavits are herewith left."'] Dated this — day of —, A. D. 1840. Yours, &c.

To Mr. P. A.
Plaintiff's attorney,
[or "agent."']

D. A. of —,
Defendant's attorney,
[or "agent."']

[See 1 Chit. Ar. Pr. 580, 590.]

12. *Notice that Bail will be put in, and justified at the same time in Court.*

In the Q. B. [or "C. P." or "Exch. of Pleas."']

Between A. B. plaintiff and C. D. defendant.

Take notice, that special bail will be put in in this cause for the defendant, on the — day of — instant, [or, "next,"] (a) in open court at Westminster Hall, and the names and additions of the persons so to become such bail are [&c., here state the full names and additions of the bail, and whether they are housekeepers or freeholders, and their residences for the last six months, &c. as in the form, ante, 249, No. 11, to the end, and then say,] and further take notice, that the said John Styles and John Nokes will at the same time justify (b) themselves as good and sufficient bail for the said defendant.

Dated this — day of —, A.D. 1840.

Yours, &c.

To Mr. P. A.
Plaintiff's attorney [or "agent."']

D. A. of —,
Attorney for the defendant.

[See 1 Chit. Ar. Pr. 580, 590.]

13. *The like, before a Judge at Chambers in Vacation.*

In the Q. B. [or "C. P." or "Exch. of Pleas."']

Between A. B. plaintiff and C. D. defendant.

Take notice, that B. B. of —, tailor, and J. B. of —, grocer, will, on the — day of — next, [or "instant,"] be put in as special bail for the defendant in this cause, and will on the same day, at the hour of — of the clock in the forenoon, justify themselves before the Honourable Mr. Justice [or "Baron"] —, or such other judge as shall be then sitting, at his Chambers in Rolls' Garden, London, as good and sufficient bail for the defendant in this cause. And take further notice, that [&c. here state whether the bail are freeholders or housekeepers, and their residences for the last six months, &c., as in the form, ante, 249, No. 11, to the end.] Dated —, A.D. 1840.

Your's, &c.

To Mr. P. A.
Plaintiff's attorney [or "agent."']

D. A. of —
Attorney for the defendant.

[See 1 Chit. Ar. Pr. 580, 590.]

(a) This notice of putting in the bail must be at least four days, exclusive of Sunday, after service of notice, and which must be served before eleven in the morning. See 1 Chit. Ar. Pr. 591.

(b) A two days' notice of justifica-

tion seems now in all cases sufficient, R. H. 2 Will. 4, reg. 16; but such notice must be served before eleven o'clock of the forenoon of the two days before the time of justifying. See 1 Chit. Ar. Pr. 592.

14. Notice pending a Rule nisi for setting aside Plaintiff's Proceedings, that Bail will be put in and perfected without Prejudice to the pending Rule (a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that provided the learned judge then sitting will give leave for putting in and justifying bail for the defendant in this cause, without prejudice to the rule nisi obtained by the defendant, such bail will be put in in this cause for the defendant, on the — day of — instant, [or "next,"] &c. [same as the form, ante, 249, No. 11, repeating at the end, "without prejudice to the said rule nisi."]

15. Affidavit of Sufficiency of Bail to accompany the Notice of Bail (b).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

B. B. of —, — (c), one of the bail for the above-named defendant, maketh oath and saith, that he is a housekeeper, [or "freeholder," as the case may be,] residing at —, (describing particularly the street or place, and number, if any,) that he is worth (d) property to the amount of £—, (the amount required by the practice of the court,) over and above what will pay (e) his just debts; [if bail in any other action, add, "and every other sum for which he is now bail;"] that he is not bail for any defendant, except in this action, [or if bail in any other action or actions, add, "except for C. D. at the suit of E. F. in the Court of —, in the sum of £—; for G. H., at the suit of I. K., in the Court of —, in the sum of —;"] specifying the several actions with the courts in which they are brought and the sums in which the deponent is bail; that this deponent's property, to the amount of the said sum of £—, [and if bail in any other action or actions, "of all other sums for which he is now bail as aforesaid,"] consists of —, (here specify the nature and value of the property in respect of which the bail proposes to justify, as follows:—"stock in trade, in his business of —, carried on by him at —, of the value of £—;" "of good book debts owing to him to the amount of £—;" "of furniture in his house at —, of the value of £—;" "of a freehold [or 'leasehold'] farm of the value of £—, situate at —, occupied by —;" or "of a dwelling-house of the value of £—, situate

(a) See a form, Chit. Sum. Prac. 324; and see the practice, 1 Chit. Ar. Pr. 576.

(b) This form is prescribed by the Rule of T. T. 1 Will. 4.

(c) From the form given by the Rule of T. T. 1 Will. 4, it would seem that the statement of the addition of the deponent is not necessary in this place. But according to the case of *Beahor's bail*, 5 Dowl. 714; *Treasure's bail*, 2 Dowl. 670; *Stone's bail*, 1 Gale, 15, it is necessary that the deponent's addition should appear on the affidavit.

(d) The form prescribed by the

Rule of T. T. 1 Will. 4, states that the bail is "possessed" of the property; but the Rule of H. T. 2 Will. 4, reg. 19, requires the affidavit to state the bail is "worth" the amount. And see 1 Chit. Ar. Pr. 583.

(e) These words "what will pay" are not in the form prescribed by the Rule of T. T. 1 Will. 4, but see R. H. 2 Will. 4, reg. 19; 1 Chit. Ar. Pr. 584, n. (m); *Stevens v. Miller*, 2 M. & W. 368, from which it will appear that they are necessary. At all events they are unobjectionable. *Lanyon's bail*, 3 Dowl. 85.

at —, occupied by —;” [or of other property, particularizing each description of property, with the value thereof]; and that this deponent hath for the last six months resided at —, [describing the place of such residence, or if he has had more than one residence during that period state it; and see the form of the notice, ante, 249, No. 11.]

Sworn [&c. ante, 207.]

B. B.

[See 1 Chit. Ar. Pr. 583.]

16. Notice from Plaintiff requiring further Time to inquire after the Bail before they are put in or justify.

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

Between A. B. plaintiff and C. D. defendant.

Take notice, that the above-named plaintiff is desirous of time to inquire after the bail whereof notice has been given in this cause, and that he doth require *three days (not exceeding three days if town bail, and six if country bail)* further time to inquire after the said bail, and that the said plaintiff doth require that the time for putting in and justifying bail in this cause shall be postponed until —, the — day of — instant [or “next.”] Dated the — day of —, A.D. 1840.

Your’s, &c.

To Mr. D. A. defendant’s attorney,
[or “agent.”]

P. A. plaintiff’s attorney,
[or “agent.”]

[See 1 Chit. Ar. Pr. 591.]

17. Entry of Exception to Bail.

I except against these bail, [or if the exception be as to one only of the bail, say, “against B. B. one of these bail.”]

P. A. plaintiff’s attorney,
—, 1840.

[See 1 Chit. Ar. Pr. 588.]

18. Notice of Exception to Bail, in ordinary Cases.

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

A. B. plaintiff v. C. D. defendant.

Take notice, that I have excepted against the bail [or if the exception be as to one of the bail only, say, “B. B. one of the bail”] put in in this cause for the defendant (a). Dated the — day of —, A.D. 1840.

Your’s, &c.

To Mr. D. A. defendant’s attorney,
[or “agent.”]

P. A. plaintiff’s attorney,
[or “agent.”]

[See 1 Chit. Ar. Pr. 588.]

(a) Before the recent Rule of H. T. 1 Vict., if bail were excepted to in vacation, and the plaintiff required them to justify before a judge at chambers, they were, by R. H. 2 Will. 4, r. 17, bound to do so, otherwise on the first day of the next term: but the Rule of H. T. 1 Vict. annuls the former rule,

and orders that in all cases bail may be justified before a judge at chambers both in term and vacation; and it is therefore conceived to be no longer requisite for the notice of exception to require a justification at chambers. See 1 Chit. Ar. Pr. 589.

19. One Day's Notice of Exception, where the intended Bail have made Affidavits, pursuant to Rule Trin. T. 1 Will. 4, reg. 3.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff v. C. D. defendant.

Take notice, that I have excepted and do except and object to the bail or intended bail whereof notice has been given in this cause, and do hereby require them to justify in person in open court at Westminster Hall, notwithstanding the affidavits made by them, and which accompanied the notice of bail served in this cause. Dated the — day of —, A. D. 1840.

Your's, &c.

To Mr. D. A. defendant's attorney,
[or "agent."]

P. A. plaintiff's attorney,
[or "agent."]

[See 1 Chit. Ar. Pr. 588.]

20. Affidavit by one of original Bail of his having discovered his Inability to justify, and of Defendant and his Attorney, to induce a Judge to give leave to add another Bail(a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

B. B. of —, —, and C. D. of —, —, the above-named defendant, and D. A. of —, attorney for the said defendant, severally make oath and say, and first the said B. B. for himself saith, that at the instance and request of the above-named defendant, the said C. D., this deponent consented and agreed to become one of the bail for him in this action, and became such bail accordingly, and that he this deponent then and until late on yesterday evening fully expected and believed that at the time he so consented and became bail as aforesaid, he was and continued to be worth and entitled to sufficient property of his own, and was and continued to be in all respects fully competent and able to justify as good and sufficient bail in this action for the said defendant, and he so informed the said defendant, and the said D. A. the said other deponent, before he became such bail. But this deponent having since particularly and carefully examined and considered the extent of his property and his debts and liabilities, he this deponent last night, and not before, ascertained, that although he is justly entitled to more property than sufficient to pay and satisfy all his just debts and present liabilities, yet that he cannot now with propriety justify as bail for the said defendant in this cause, inasmuch as this deponent is now doubtful whether some of the debts due to him will be paid; and he thereupon last night, and not before, informed the said defendant thereof. And these deponents, the said defendant and the said D. A., for themselves respectively say, that until last night (when the said B. B. informed the said defendant, as stated in his affidavit,) they fully expected and believed that the said B. B. was possessed of sufficient property, and was in all other respects competent and able to justify as good and sufficient bail for the said defendant in this action. And they further say, that J. J. of —, —, [naming another person, with his addition and description, and state whether he is a house-keeper or freeholder, and his residence for the last six months,] hath consented and agreed to become an added bail for the said defendant in this

(a) See Chit. Sum. Prac. 329. The form must of course be altered to meet the facts of each particular case.

action in lieu of the said *B. B.* in case the court or one of the learned judges thereof will give leave for that purpose. And these deponents have diligently inquired into the circumstances of the said *J. J.*, and verily believe that he is fully able and competent to justify as an added bail for the said defendant in this cause.

The above-named deponents *B. B.*, *C. D.*, and *D. A.*, were severally sworn in the Court of —, at Westminster Hall, [*or* “at my chambers in Rolls’ Garden,” *or* “at my house in Bedford Square,”] the — day of —, A.D. 1840. By the Court [*or* “before me.”] (*Judge’s signature.*)

B. B.
C. D.
D. A.

[*See 1 Chit. Ar. Pr. 589, 604.*]

21. *Affidavit that one of the Bail is a material Witness, in order to induce a Judge to allow another to be added (a).*

In the Q. B. [*or* “C. P.” *or* “Exch. of Pleas.”]

Between *A. B.* plaintiff and *C. D.* defendant.

D. A. of —, attorney for the above-named defendant, maketh oath and saith, that *B. B.* and *T. B.* have been and are the bail in this cause for the said defendant, and that on fully inquiring into and considering the evidence which it was and is essential for the said defendant to adduce in support of his defence to this action, he ascertained that the said *B. B.* was and is, and will be, a material and necessary witness for the said defendant on the trial of this cause, and that without his testimony he cannot safely proceed to the trial of this cause, as this deponent is advised, [“by his counsel,” *if the fact,*] and as he verily believes; and this deponent further saith, that *J. J.* of &c. [*same as in the preceding form to the end, stating the sufficiency of the proposed new bail.*]

[*See 1 Chit. Ar. Pr. 589.*]

22. *Summons for leave to add one or more Bail(a).*

B. B. } Let the plaintiff’s attorney or agent attend me at my chambers
v. } in Rolls’ Garden, to-morrow, at — of the clock in the forenoon
D. D. } [*or* “afternoon,”] to show cause why the defendant should not have
leave to add *J. J.* of &c., as one [*or* “two”] of the bail in this cause, in lieu of *B. B.*, [*or* “*B. B.* and *T. B.*,”] of whom you have had notice, and why, until such proposed bail shall have been added and justified, (if excepted to) all proceedings in this cause shall not be stayed.

(*Judge’s signature.*)

[*See 1 Chit. Ar. Pr. 589.*]

23. *Notice of adding and justifying two Bail, after leave of a Judge.*
In the Q. B. [*or* “C. P.” *or* “Exch. of Pleas.”]

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice, that *J. J.* of —, —, and who is a [housekeeper] there, and *J. B.* of —, —, and who is a [freeholder of a messuage and land in the parish of —, in the county of —, in the possession of —,

(a) See a form, Chit. Sum. Prac. 331.

his tenant,] will, by the leave and order of the Honourable Mr. Justice [or "Baron"] —, on — next, add themselves to the bail already put in in this cause for the said defendant; and will at the same time justify themselves in open court at Westminster Hall, in the county of Middlesex, (or if before a judge at chambers, see the form, post, 256, No. 30,) as good and sufficient bail in this cause for the said defendant; and the said J. J. hath resided continually, &c. [here state the different residences of both the bail for the last six months, as in the form, ante, 249, No. 11.] Dated this — day of —, A. D. 1840,

To Mr. P. A. plaintiff attorney,
[or "agent."]

D. A., of —, defendant's
attorney [or "agent."]

24. The like, of adding one Bail, and justifying both.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that J. J. of —, —, will, on — next, add himself [or "herself"] to the bail already put in for the defendant in this cause, and that he, together with [the name of the former bail,] one of the bail already put in in this cause for the said defendant, and of whom you have before had notice, will, [&c. proceed as in the preceding form, and conclude by stating the addition, description, and residences of the added bail, as well as the former bail, and whether each be a freeholder or housekeeper.]

25. Notice (before leave obtained) of adding and justifying two Bail, before a Judge at Chambers (a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that J. J. and J. B. will on — next, provided the learned judge then sitting shall give leave, add themselves to the bail already put in for the defendant in this cause, and at the same time will justify themselves, [if the bail were put in before a commissioner, here say, "by affidavit"] before the Honourable Mr. Justice [or "Mr. Baron"] —, or such other judge as shall be then sitting in chambers in Rolls' Garden, London, [or if any other place be appointed, "at —, in the county of —"], as good and sufficient bail for the said defendant; and the additions, descriptions, particulars, and residences of and relating to the said J. J. and J. B. are as follows:—namely, —, of — [&c., proceed as in the form, ante, 249, No. 11, to the end.]

26. The like, of adding and justifying one Bail.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that B. B. of —, will, on — next, add himself to the bail already put in in this cause for the defendant, and that he, together with T. B., one of the bail already put in in this cause for the said defendant, and of whom you have before had notice, will at the same time justify themselves before, [&c. as in the last to the end, inserting the addition, description, particulars, and residences of the added bail, as in the form, ante, 249, No. 11, and in the Common Pleas also of the former bail.]

(a) See a form, Chit. Sum. Prac. 331.

country bail, here say "by affidavit"] before the Honourable Mr. Justice [or "Baron"] —, or such other judge as shall be then sitting in chambers in Rolls' Garden, London, [or if any other place be appointed, "at —, in the county of —"] as good and sufficient bail for the said defendant in this cause. [In Common Pleas here repeat the addition, description, and particulars of the bail, and their residences during the last six months, as directed in the form, ante, 256, No. 29. Dated this — day of —, A. D. 1840.

To Mr. P. A.
Plaintiff's attorney
[or "agent."]

D. A.
Defendant's attorney
[or "agent."]

31. Affidavit of the Service of Notice of Justification.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. C. clerk to D. A. of —, gentleman, attorney to the above-named defendant, maketh oath and saith, that this deponent did, on the — day of — instant, before eleven o'clock in the forenoon (a),* serve Mr. P. A. the attorney for the above-named plaintiff, with a true copy of the notice hereunto annexed (anner it), by delivering the same to and leaving it with a clerk of the said Mr. P. A., at his chambers in —. [Or, if the service were on the attorney personally, then from the asterisk proceed thus: "personally serve Mr. P. A., the attorney for the above-named plaintiff, with a true copy of the notice hereunto annexed."] (The affidavit must state the mode of service.) C. C.

Sworn [&c. ante, 207.]

[See 1 Chit. Ar. Pr. 595.]

32. The like, also with Affidavit of having with the Notice of Bail delivered an Affidavit of Sufficiency, pursuant to Rule Trin. T. 1 Will. 4, so as to obtain Costs of Justification (b).

[Proceed as in the last to the end, and then thus:]—and this deponent further saith, that on the — day of — last [or "instant"] before the hour of eleven o'clock in the forenoon of that day, he did in like manner personally serve the said Mr. P. A., the said plaintiff's attorney, with a true copy of the notice of the said bail in this cause hereunto annexed and marked B.; and the same last-mentioned notice was then and there accompanied by affidavits of each of the said bail by them duly sworn, and true copies of which said affidavits are hereunto annexed marked C. and D.; and this deponent then showed the said original affidavits to the said Mr. P. A., and read the same to him, and personally served him with a true copy thereof; and thereupon the said plaintiff by his said attorney excepted to such bail, and gave notice of such exception, and

(a) The rule requiring a service, and affidavit of a service, before eleven o'clock in the forenoon, only applies to town bail, and to original bail, and not to bail justifying under rule or order for time; and if the service was

three days exclusive of Sunday before the day of justifying, then it suffices if the affidavit states a service generally on the third or prior day. See 1 Chit. Ar. Pr. 592.

(b) See a form, Chit. Sum. Prac.

bath thereby required and compelled such bail to attend this honourable court to justify, notwithstanding the said affidavits were so made and so accompanied the said notice of bail as aforesaid. C. C.

Sworn [*&c. ante*, 207.]

[*See 1 Chit. Ar. Pr.* 595.]

33. Affidavit to oppose Bail.

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. C. of —, clerk of Mr. P. A. of —, attorney for the plaintiff in this cause, maketh oath and saith, that Mr. D. A., the defendant's attorney, having served the said P. A. with notice of justifying bail in this action, he, this deponent, by the order and direction of the said P. A., inquired into the sufficiency of the said bail, and saith, that [*&c. here state the particular objections intended to be relied on against the bail, according to the facts: mere matters of report and general opinion should be avoided, (see 1 Chit. Ar. Pr.* 597); *when facts are stated upon the representation or information of other persons add, "and which this deponent verily believes to be true."*] And this deponent further saith, that B. B. one of the said bail, hath been a bankrupt, and hath not yet obtained his certificate, as this deponent hath been informed and verily believes," (*or otherwise, according to the facts.*)

Sworn, [*&c. ante*, 207.]

[*See 1 Chit. Ar. Pr.* 597.]

34. Affidavit to obtain further Time to justify (*or add and justify*), stating *Absence of Bail, and Inability to account for it at present* (a).

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. C. of —, clerk to Mr. D. A. of —, gentleman, attorney for the above-named defendant, maketh oath and saith, that B. B., one of the bail in this action for the said defendant, and whose name is mentioned in the notice of justification hereunto annexed, was put in as such bail with the privity and consent of the said B. B. [*or if not already put in, say, "promised to become bail in this action for the said defendant, and that the said B. B.'s name was put into the said notice of justification with his privity and consent,"*] and promised to attend this morning and justify as such bail, and this deponent verily believes that the said B. B. was and is able to justify as good and sufficient bail in this action; and this deponent further saith, that he fully expected that the said B. B. would have attended this morning to justify accordingly,* but that the said B. B. hath not yet appeared for that purpose, as this deponent verily believes; and this deponent is not aware of the cause or reason of the absence of the said B. B. from this honourable court, and is at present unable to state or account for the same: but this deponent fully expects and believes he shall be able on oath to state the cause in the afternoon of this day. [*When at the time the application for further time to justify, or add and justify bail, an affidavit of a defence on the merits can be made, or an*

(a) See a form, Chit. Sum. Prac. 336; also another form, (*id.* 335,) of an affidavit of the ignorance of the party who served the notice of bail,

or notice of justification, of a rule of court, and his consequent non-observance of its directions. See the practice, 1 Chit. Ar. Pr. 603, 604.

affidavit stating the names, additions, descriptions, residences, and expected sufficiency of other bail proposed to be added can be made, then let the same be made and produced accordingly, as thus :]—“ And this deponent (*usually the defendant or his attorney*) further saith, that he is advised, and verily believes, that he has a good and sufficient defence to this action on the merits. And this deponent further saith, that [*state the names and sufficiency, &c. of proposed added bail, as ante, 249, No. 11.*]

Sworn, [*&c. ante, 207.*]

C. C.

35. *The like, of Illness of the Bail(a).*

[*Proceed as in the last to the asterisk, and then thus :*—And this deponent further saith, that he this morning called at the house of the said B. B. in order to accompany him to this honourable court to justify as bail for the said defendant, according to his said promise, when this deponent found the said B. B. very dangerously ill and in bed, with which illness he had been suddenly attacked yesterday morning, as he this deponent was informed and verily believes (*state the nature of the illness, and whether dangerous or not, and how recent, according to the facts*); and this deponent verily believes that the said B. B. is quite unable to come to or attend this honourable court this morning for the purpose of justifying as bail for the said defendant in this action, in consequence of the said illness, and that he will continue so unable for ——— days or more; and this deponent further saith, that he was [“ and as this deponent verily believes the said defendant also was”] wholly ignorant of the said illness of the said B. B., or of his inability to attend to justify as bail until this morning [*&c. conclude, if you can, as in the last.*]

Sworn [*&c. ante, 207.*]

C. C.

[*See 1 Chit. Ar. Pr. 603.*]

36. *Rule for the Allowance of Bail, in Q. B.*

On the ——— day of ———, A. D. 1840.

B. } Upon reading the affidavit of C. C., it is ordered, that the bail
v. } put in in this cause for the defendant, who have this day justified
D. } themselves in court, be allowed, and the bail-piece filed. Upon
the motion of Mr. ———. By the Court.

[*See 1 Chit. Ar. Pr. 604.*]

37. *The like, as to one Bail, and for Time to justify the other, in Q. B.*

On the ——— day of ———, A. D. 1840.

B. } Upon reading the affidavit of C. C., it is ordered that B. B.,
v. } one of the defendant's bail, who has this day justified himself in
D. } court, be allowed; and that the said defendant have time until
——, to justify T. B. his other bail in this cause; the said defendant

(a) See note (a), page 258. See a form, Chitty's Summary Practice, 337; and other forms of an affidavit of an accident to one of the bail in coming up to justify, *id.* 337; of an affidavit stating the bail to have been deterred from attending by plaintiff's threats, &c. *id.* 338; of an affidavit of

bail having consented but since refused, *id.*; of an affidavit that bail had examined into his property and found himself unable to justify, *id.*; of an affidavit that since putting in bail, one has ceased to be a house-keeper, *id.*

hereby consenting that the plaintiff shall be in the same situation, by the course of this court, as if they had both justified this day. Upon the motion of Mr. ——. By the Court.

38. *The like, in C. P.*

In the Common Pleas.

On the — day of —, A. D. 1840.

B. } Upon reading the affidavit of C. C., and the notice thereto
v. } annexed, and on hearing counsel for the defendant, and on the ex-
D. } amination of B. B. and T. B. on their oaths this day, in open
court, it is ordered that the said B. B. and T. B. do stand and be allowed
as good and sufficient bail for the said defendant in this action. On the
motion of Mr. —, for the defendant.

By the Court.

39. *The like, in Exchequer.*

In the Office of Pleas of the Exchequer.

A. B. plaintiff and C. D. defendant.

On —, the — day } Upon the motion of Mr. —, of counsel for
of —, A. D. 1840. } the defendant, and upon reading the bail-piece,
the affidavit of C. C. (*the deponent to affidavit of service of notice of justifi-
cation of town bail; or if country bail, the deponent to the affidavit of
the bail on justification,*) and the affidavit of — (*the name of the person
who swore to the caption of the recognizance of bail by the commissioners,*)
and the paper writing thereto annexed, it is ordered, that the said B. B.
and T. B. (*names of the bail*) be admitted bail in this cause for the de-
fendant, each of them having justified in £—, (*double the sum sworn
to.*) [*If the defendant be in custody add, "and that the defendant be in
consequence discharged out of the custody of the warden of the Fleet
Prison, as to this action," or "that a writ of supersedeas do issue to dis-
charge the defendant out of the custody of the sheriff of the county of
—, as to this action."*]

By the Court.

Rule, fo. [No. —.] (*Amount per folio.*)

ROSE.

40. *Notice of subsequent Justification of other Bail, or of added Bail.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between A. B. plaintiff and C. D. defendant.

Take notice, that in pursuance of the rule of this honourable court, a copy of which is hereunto annexed, B. B., of whom you have already had notice, [*or when the rule has given time to add and justify another bail, "J. J. of, &c. —,"*] will, on — next, add himself to the bail already put in in this cause for the defendant, and at the same time will [*if the bail be one of those originally put in, omit the words from the word "add"*] justify himself in open court at Westminster Hall, in the county of Middlesex, [*or if before a judge at chambers, see ante, 256, No. 30,*] as good and sufficient bail in this action for the said defendant; and the addition, description, particulars, and residence of the said B. B. [*or "J. J."*] have been and are as follows, [*here state them as ante, 249, No. 11.*] Dated this — day of —, 1840.

To Mr. P. A.,
Plaintiff's attorney,
[*or "agent."*]

Yours, &c. D. A.
Defendant's attorney,
[*or "agent."*]

[See 1 Chit. Ar. Pr. 592.]

41. *Affidavit of the Service thereof.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. C. of —, clerk to D. A. of —, attorney for the above-named defendant, maketh oath and saith, that he did, on the — day of — instant, before three o'clock in the afternoon, personally serve Mr. P. A., the attorney for the above-named plaintiff, with true copies of the rule and notice respectively hereunto annexed [or, if the service were on a clerk, after the word "afternoon," say, "serve on P. A., the attorney for the said plaintiff, with true copies of the rule and notice respectively hereunto annexed,"] by delivering the same to a clerk of the said Mr. P. A., at his office in —.

Sworn [&c. ante, 207.]

[See 1 Chit. Ar. Pr. 592.]

42. *Rule for Allowance of such Bail in Q. B. or C. P.*

On the — day of —, A. D. 1840.

B. } Upon reading the rule made in this cause on —, and the affi-
v. } davit of C. C., it is ordered that B. B., one of the defendant's bail,
D. } who has this day justified himself in court, be allowed, together
with J. B., who justified himself on — last. Upon the motion of Mr.
—.
By the Court.

X. BAIL, IN THE COUNTRY.

1. *Bail-piece in Q. B.*

In the Queen's Bench.

On the — day of —, A. D. 1840.

— (the county in the writ) to wit, C. D., defendant, is delivered to bail upon a *cepi corpus*, to B. B. of —, —, and T. B., of the same place, —, at the suit of A. B., the plaintiff.

Bail for £—, by order of —, (name of judge who made the order to hold to bail.)

D. A., attorney for the defendant.

Taken and acknowledged conditionally at —,

in the county of —, the — day of —,

A. D. 1840, before me,

C. C., a commissioner [&c. ante, 207.]

[See 1 Chit. Ar. Pr. 608.]

2. *The like, in C. P.*

[Write a copy of the writ upon parchment, and then at the foot of it write]—

The bail are, B. B., of —, —, and

T. B., of —, —,

each of whom is bound in £ — (the sum for which the defendant was ordered to be held to bail.)

D. A., attorney for the defendant.

Taken and acknowledged conditionally at —,

the — day of —, A. D. 1840, before me.

C. C., a commissioner [&c. See ante, 207.]

3. *The like, in Exchequer.*

In the Exch. of Pleas.

On the — day of —, A.D. 1840.

— (the county in the writ) to wit. C. D. is delivered to bail on a *cepi corpus* to B. B., of —, —, and

T. B., of —, —, At the suit of A. B.

Bail for £—, by order of — (name of the judge who made the order to hold to bail.)

D. A., attorney for the defendant.

Taken and acknowledged conditionally at

—, in the county of —, the — day

of —, A.D. 1840, before me,

C. C., a commissioner [&c. see *ante*, 207.]

B. B.	{ actual sig- natures of the bail.
T. B.	

4. *Affidavit of Sufficiency of Bail to accompany the Notice of Justification.*[Same as the form in the case of town bail, as *ante*, 251, let the jurat be thus:]

The above-named deponents B. B. and T. B. were severally and respectively sworn at —, in the county of —, this — day of —, A.D. 1840, before me, C. C., a commissioner, [&c. see *ante*, 207.]

[See 1 Chit. Ar. Pr. 608.]

5. *Old Form of Affidavit of Justification (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

B. B. of —, —, and T. B. of —, —, bail in this cause for the above-named defendant, severally make oath and say, and first this deponent B. B. for himself saith, that he is a housekeeper at No. — aforesaid, and that he this deponent is worth the sum of £ — over and above what will pay all his debts; and this deponent T. B. for himself saith, that he is a housekeeper at No. — aforesaid, and that he this deponent is worth the sum of £ — over and above what will pay all his debts.

The above-named deponents B. B. and T. B.

were severally and respectively sworn at —,

the — day of —, A.D. 1840, before me,

C. C., a commissioner [&c. see *ante*, 207.]

B. B.

T. B.

6. *Affidavit of Acknowledgment before a Commissioner.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

A. A. of —, —, maketh oath and saith, that the recognizance of bail or bail-piece hereunto annexed was duly taken and acknowledged by B. B. of —, and T. B. of —, the bail therein named, before C. C. gentleman, the commissioner who took the same in this deponent's presence, this — day of — instant [or "last past."]

Sworn at —, in the county of, the

— day of —, A.D. 1840, before me,

A. A.

C. C. a commissioner [&c. see *ante*, 207.]

[See 1 Chit. Ar. Pr. 609.]

(a) The old form may be, but is now seldom, used, and had better not be. See 1 Chit. Ar. Pr. 608.

7. *Notice of Bail in Q. B.*

In the Q. B.

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice, that the bail-piece in this cause, with the affidavit of the due taking thereof, was this day filed with the Honourable Mr. Justice —, at his chambers in Serjeants' Inn, Chancery Lane, London, and the names and additions [*&c. same as in the form, ante, 249, No. 11, stating the names and addresses and residences of the bail for the last six months, and whether they are freeholders or householders.*]

[*See 1 Chit. Ar. Pr. 610.*]

8. *The like, in C. P.*

In the C. P.

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice, that special bail was on the — day of — instant put in in this cause for the above-named defendant before *C. C.*, gentleman, a commissioner appointed to take special bails in and for the county of —, and the names and additions and particulars of and relating to such bail, and their respective residences for the last six months, have been and are as follows, namely, *B. B.* [*&c. state the particulars as ante, 249, No. 11, and conclude thus:*] and which said bail have been allowed by the Honourable Mr. Justice —; and the bail-piece, together with the affidavit of the due taking thereof, is filed with — esq. one of the Masters of this honourable court. Dated this — day of —, A. D. 1840.

D. A. of — defendant's attorney [*or "agent."*]

To Mr. *P. A.* plaintiff's attorney [*or "agent."*]

9. *The like, in Exchequer.*

In the Exch. of Pleas.

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice, that the bail-piece in this cause was this day allowed conditionally by the Lord Chief Baron, [*or "the Honourable Mr. Baron —,"*] and was, together with an affidavit of the due taking thereof annexed thereto, filed with —, esq. one of the Masters of this honourable court; and the names [*&c. the notice should state the names and additions of the bail, and the street and number, and their residences for the last six months, and whether they are housekeepers or freeholders, as in the form, ante, 249, No. 11, and conclude thus:*] Dated this — day of —, A. D. 1840.

Yours, &c.

D. A. of —, defendant's attorney
[*or "agent."*]

To Mr. *P. A.* plaintiff's attorney
[*or "agent."*]

10. *Entry of Exception.*

I except against these bail, [*or, if the exception be as to one of the bail, say, "against B. B. one of these bail."*]

11. *Notice of Exception.*

Same as in the case of town bail, as ante, 252, No: 18.

12. *Notice of Justification.*

Same as in the case of town bail, as ante, 256, No. 28, 29, except that it states that the bail "will justify themselves by affidavit in open court," &c.

13. *Affidavit of Service thereof.*

Same as in the case of town bail, as ante, 257, No. 31.

14. *Affidavit to oppose the Justification.*

Same as in the case of town bail, as ante, 258, No. 33.

15. *Rule of Allowance in Q. B.*

Same as in the case of town bail, as ante, 259, No. 36.

16. *The like, in C. P.*

In the C. P.

On —, the — day of —, 1840.

B. } Upon reading the affidavit of A. A., and notice hereunto annexed,
agt } and also the affidavit of B. B. and T. B. (*the affidavit of justifica-*
D. } *tion*), and on hearing counsel for the defendant, it is ordered, that
the said B. B. and T. B. do stand and be allowed as good and sufficient
bail for the said defendant in this action. On the motion of Mr. —,
for the defendant. Entered.

By the Court.

17. *The like, in Exchequer.*

See the form, ante, 260, No. 39.

XI. BAIL WHEN THE DEFENDANT IS IN CUSTODY.

1. *Bail-piece in Q. B.*

In the Q. B.

On the — day of —, A.D. 1840.

Bail for £—, by order of —, (*name of judge who made the order to hold to bail*). D. A. attorney.

— (*the county in the writ*) to wit: C. D., now a prisoner in the prison of the marshal of the Marshalsea, is delivered to bail to

At the suit of A. B.

B. B. of —, —, and
T. B. of —, —.

Taken and acknowledged conditionally at my
chambers in Rolls' Garden, this — day
of —, 1840, before me, (*Judge's signature.*)

[*See 1 Chit. Ar. Pr. 612.*]

2. *Note in writing for the Master in C. P.*

[Same as the form, ante, 248, No. 7, except that after the defendant's name in the margin, add the words, "a prisoner in the Queen's Bench prison," or "a prisoner in the Fleet," or "a prisoner in the custody of the sheriff of ———."]

3. *Master's Entry and Bail-piece in C.P.*

[Same as the form, ante, 248, No. 8, except that after the name and addition of the defendant, "C. D., late of ———," add the words, "but now a prisoner in the prison of the marshal of the Marshalsea, at the suit of," &c. or "but now a prisoner in the Fleet, at the suit of," &c. or "but now a prisoner in custody of the sheriff of ———, at the suit of," &c.]

4. *Notice of Bail having been put in, and of justifying them in Q. B. or C. P.*

In the Q. B. [or "C. P."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that special bail was this day put in in this cause for the defendant, who is now a prisoner in the prison of the marshal of the Marshalsea [or "in the prison of the Fleet," or "in the custody of the sheriff of ———"], at the suit of the above-named plaintiff, before the Honourable Mr. Justice ———, at his chambers in Rolls' Garden, London, and the names, additions, descriptions, and residences of such bail, for the last six months, have been and are as follows, namely, B. B. of No. —, — street, —, and who is a housekeeper there, and T. B. of No. —, — street, —, and who is a housekeeper there, and also a freeholder of a messuage and farm in the parish of —, in the county of —, and now in the possession of T. T., as his tenant, and, &c. [state the residences of each of the bail for the last six months, as ante, 249, No. 11]: and further take notice, that the said bail will on — next justify themselves in open court at Westminster Hall, in the county of Middlesex, [or, if at chambers, say, "at the chambers of the Honourable Mr. Justice —, in Rolls' Garden aforesaid,"] as good and sufficient bail in this cause for the said defendant. Dated this — day of —, 1840.

Yours, &c.

To Mr. P. A.
Plaintiff's attorney,
[or "agent."]

D. A. of —,
Defendant's attorney,
[or "agent."]

[See 1 Chit. Ar. Pr. 612.]

5. *The like, in Exchequer, of putting in and justifying at the same time.*

In the Exch. of Pleas.

Between A. B. plaintiff and C. D. defendant.

Take notice, that special bail will be put in in this cause for the defendant, who is now a prisoner in the prison of the Fleet [or "in the prison of the marshal of the Marshalsea," or "in the custody of the sheriff of ———"], at the suit of the above-named plaintiff, on — next, in open court at Westminster Hall, [or "before the Honourable Mr. Baron —, at his chambers," &c. as in preceding form,] and the names, additions, descriptions, and residences of such bail for the last, &c. [conclude as in the preceding form.]

6. *Affidavit of Service of such Notice.*

[Same as the form, ante, 257, No. 31.]

7. *Rule of Allowance, and Discharge in Term Time.*

[Same form as the forms of rules for allowance in Q. B. and C. P., ante, 259, 260, 261, to the end, except that immediately before the words "on motion of Mr. ——" insert these words, "and that the said defendant be discharged out of the custody of the marshal of the Marshalsea," [or "the warden of the Fleet," or "the sheriffs of London," or "the sheriff of Middlesex,"] as to this action. [If the defendant be in any other custody, then after the words, "as to this action," add, "by writ of superse-deas." The form in the Exchequer is nearly similar.]

8. *Judge's Fiat for such Rule, in Vacation.*

C. D. } Upon hearing the attornies or agents on both sides, and
a prisoner, { special bail having been put in and justified, I do order that
ats. { a rule be drawn up for the allowance of the same, and for
A. B. { the discharge of the defendant out of the custody of the
marshal of the Marshalsea, [or "the warden of the Fleet," or "the
sheriffs of London," or "the sheriff of Middlesex,"] as to this action, [or,
if the defendant be in any other custody, say, "out of the custody of the
sheriff of ———, as to this action, by writ of supersedeas."]

Dated the ——— day of ———, 1840.

[Judge's signature.]

[See 1 Chit. Ar. Pr. 613.]

9. *Rule thereon in Q. B. or Exchequer.*

C. D. } Upon reading the order of the Honourable Mr. Justice
a prisoner, { [or "Baron"] ———, dated the ——— day of ———, A.D. ———,
ats. { and it thereby appearing that the defendant hath put in and
A. B. { perfected bail in this action; and upon reading the affidavit
of C. C. and the notice thereunto annexed; it is ordered that the said
bail be allowed and the bail-piece filed, and that the said defendant be
discharged out of the custody of the marshal of the Marshalsea, [&c. as
in the preceding form.]

By the Court.

10. *The like, in C. P.*

C. D. } Upon reading the order of the Honourable Mr. Justice
a prisoner, { ———, dated the ——— day of ———, A.D. ———, and it thereby
ats. { appearing that the defendant hath put in and perfected bail
A. B. { in this action; and upon reading the affidavit of C. C. and
the notice thereunto annexed; it is ordered, that B. B. and T. B. do stand
and be allowed as good and sufficient bail for the said defendant in this
action, and that the said defendant be discharged out of the custody of the
warden of the Fleet, [&c. conclude as in the last form but one.]

By the Court.

11. *Writ of Supersedeas.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas *C. D.* is detained in our prison under our custody by virtue of our writ of *capias* issued out of our Court of Queen's Bench, [or "*C. P.*" or "*Exch. of Pleas,*"] at Westminster, to you directed, and dated the — day of —, A.D. —, to answer *A. B.* in an action on promises, (or as the form of action is,) and because it sufficiently appears to our said Court that the said *C. D.* hath found good and sufficient bail to answer the said *A. B.* in the action aforesaid; therefore we command you that if the said *C. D.* be detained in our prison under your custody by virtue of the said writ, and for no other cause, then do you immediately discharge the said *C. D.* out of your custody, and permit him to go at large, as you will answer the contrary at your peril. Witness, —, (name of chief justice, or in *Exch. of chief baron,*) at Westminster, the — day of —, in the — year of our reign.

[See 1 *Chit. Ar. Pr.* 613.]

XII. PAYMENT OF MONEY INTO COURT IN LIEU OF SPECIAL BAIL.

1. *Notice of Defendant's Intention to pay £10 into Court, and to allow the Sums deposited in the Sheriff's hands in lieu of Bail to him, to remain in Court in lieu of Special Bail.*

In the Q. B. [or "*C. P.*" or "*Exch. of Pleas.*"]

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice, that I have paid [or "*intend paying*"] into court, the sum of £10 as an additional security for the costs of this action, and that that sum, together with the sum of £—, (the sum indorsed on the writ and paid to the sheriff,) and the sum of £10 for costs, which, in lieu of bail to the sheriff, were by the defendant deposited in his hands, and which have been paid into court, will remain in court to abide the event of this suit, or the further order of the court; and thereupon that the defendant will enter a common appearance (a) instead of putting in and perfecting special bail, pursuant to the statute in such case made and provided. Dated this — day of —, 1840.

Yours, &c.

To Mr. *P. A.*
Plaintiff's attorney,
[or "*agent.*"]

D. A.
Defendant's attorney,
[or "*agent.*"]

[See 1 *Chit. Ar. Pr.* 615.]

2. *Rule for paying into Court £10 for Costs, and to allow the Sums deposited in the Sheriff's hands in lieu of Bail to the Sheriff, to remain in Court in lieu of Special Bail.*

In the Q. B. [or "*C. P.*" or "*Exch. of Pleas.*"]

On the — day of —, A.D. 1840.

B.) It is ordered, that the defendant have leave to pay into court the
v) sum of £10 as an additional security for the costs of this action,
D.) and that that sum, together with the sum of £—, (the sum indorsed on the writ and paid to the sheriff,) and the sum of £10 for costs, which, in lieu of bail to the sheriff, were by the defendant deposited in his

(a) If a common appearance has already been entered to the writ of summons, state the fact accordingly.

hands, and which have been by him paid into court, shall remain in court to abide the event of this suit, or the further order of the court; and thereupon that the defendant enter a common appearance instead of putting in and perfecting special bail, pursuant to the statutes in such case made and provided; upon notice of the rule being given to the plaintiff.

Side Bar.

By the Court.

[See 1 Chit. Ar. Pr. 615.]

3. Rule for paying Money into Court in lieu of Special Bail.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A.D. 1840.

B. } It is ordered, that the defendant have leave to pay into court the
v. } sum of £— for the debt, and the sum of £20 as a security for
D. } costs, making together the sum of £—, to abide the event of this
cause, or the further order of this court; and thereupon that the defendant
enter a common appearance, instead of putting in and perfecting special
bail, pursuant to the statute in that case made and provided; upon notice
of the rule being given to the plaintiff.

Side Bar.

By the Court.

[See 1 Chit. Ar. Pr. 615.]

4. Rule for Plaintiff's taking out of Court Part of the Sum paid in, in lieu of Bail.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A.D. 1840.

B. } Upon reading the rule made in this cause on —, (*the date of the*
v. } *rule nisi*), the affidavit of P. A., and no cause being shown to the
D. } contrary; it is ordered that the plaintiff be at liberty to take the sum
of £—, part of the sum of £— paid into court, in lieu of bail in this
action, pursuant to the statute in that case made and provided, out of
court; and unless the plaintiff shall accept thereof, with costs, to be taxed
by one of the masters, in full discharge of this action, that the said sum
of £— be struck out of the declaration; and upon the trial of the issue
that the plaintiff be prevented from giving evidence for the said sum of
£—. Upon the motion of Mr —.

[See 1 Chit. Ar. Pr. 616.]

XIII. PROCEEDINGS BY AND AGAINST BAIL.

1. *Render of the Principal.*
2. *Proceedings against Bail to the Action.*
3. *Proceedings against Bail in Error.*

1. RENDER OF THE PRINCIPAL.

1. *Memorandum of State of Cause in Q. B. in order to render a Defendant when at large.*

In the Queen's Bench.

A. B. } — (the venue.) Defendant to render [or "be rendered"]
v. } in discharge of his bail in this action.
C. D. } Oath for £— [or "bail for £— by order of —" (name

of judge who made the order to hold to bail)] [if before declaration; adding, if afterwards, "declaration filed, or delivered," "issue joined," or "interlocutory judgment signed;" and if after final judgment, say, "final judgment for £——, debt and damages," or, in *assumpsit*, "for £——, damages and costs."]

D. A. attorney.

[See 1 Chit. Ar. Pr. 627, 628.]

2. Notice of Render.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that the above defendant did this day render himself [or "was this day rendered"] in discharge of his bail in this cause, at the suit of the above plaintiff, and was thereupon committed by the Honourable Mr. Justice —— to the custody of the marshal of the Marshalsea [or in C. P. or Exchequer, "to her majesty's prison of the Fleet"], there to remain until &c. Dated this —— day of ——, 1840. Your's &c.

D. A. attorney for defendant, [or "for the defendant's bail."]

To Mr. P. A. plaintiff's attorney.

[See 1 Chit. Ar. Pr. 628.]

3. Affidavit, in Q. B. or Exchequer, of Service of Notice of Render (a).

In the Q. B. [or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. C. of ——, clerk to ——, gentleman, attorney for the defendant [or "defendant's bail"] in this cause, maketh oath and saith, that he this deponent did, on the —— day of —— instant, personally serve Mr. P. A. the plaintiff's attorney, with a true copy of the notice hereunto annexed [annex a copy, and if the service was on his clerk or servant, add, "by delivering the same to the clerk (or 'servant') of the said Mr. P. A. at his house (or 'chambers') in ——, in the county of ——."]

Sworn [&c. ante, 207.]

C. C.

[See 1 Chit. Ar. Pr. 628.]

4. Minute of Render and Commitment, in Q. B.

In the Queen's Bench.

Between A. B. plaintiff and C. D. defendant.

—— (the venue.) C. D. the above-named defendant, did this —— day of ——, 1840, render himself [or "was rendered"] in discharge of his bail, at the suit of the above plaintiff, and was thereupon committed by the Honourable Mr. Justice —— to the custody of the marshal &c. there to remain until &c.

[See 1 Chit. Ar. Pr. 629.]

5. The like, in Exchequer.

In the Exchequer of Pleas.

Between A. B. plaintiff and C. D. defendant.

—— (the venue.) C. D., the above-named defendant, was this day rendered [or, if he voluntarily surrendered himself, "rendered himself"]

(a) This is not necessary in C. P.

in discharge of his bail in this cause, at the suit of the above-named plaintiff, and was thereupon committed by the Honourable Mr. Baron — [or “the Right Honourable the Lord Chief Baron”] to the custody of the warden of her majesty’s prison of the Fleet, there to remain until &c. Dated this — day of —, 1840.

6. *Entry of Render and Commitment in Q. B.*

[*This entry is made in the marshal’s book, which is kept in the master’s office; you will see the form of the entry there. See 1 Chit. Ar. Pr. 629.*]

7. *Entry of Exoneretur, in Exchequer, when the Defendant is rendered to the Fleet.*

The within-named defendant, having surrendered himself [or “been rendered”] in discharge of his bail, was thereupon committed to the custody of the warden of her majesty’s prison of the Fleet, there to remain until &c. Dated this — day of —, 1840.

(*Judge’s signature.*)

8. *Judge’s Order for rendering Defendant to a County Gaol.*

Whereas *C. D.* hath been held to special bail upon mesne process issued out of her majesty’s court of —, at Westminster, in an action at the suit of *A. B.* (the sum sworn to [or “the sum for which the defendant was ordered to be and was held to bail”] being £—, and upwards), and the said defendant is desirous of surrendering himself in discharge of his bail in the said action to the common gaol of the county of —, (being the county in which he was arrested), I order that the said defendant may, in pursuance of the statute in such case lately made and provided, surrender himself into the custody of the gaoler of the said common gaol in discharge of his bail in the said action, there to remain until discharged by due course of law, and that this order be lodged with the said gaoler at the time of such surrender; the plaintiff at the time of issuing this order [not having declared]. Dated this — day of —, 1840.

(*Judge’s signature.*)

P. A. plaintiff’s attorney, [or “agent.”]

D. A. defendant’s attorney, [or “agent.”]

[*See 1 Chit. Ar. Pr. 631.*]

9. *Notice of lodging such Order, and of Defendant being in custody thereon.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice, that the above-named defendant was this day [or “on the — day of — instant,” or “last”] rendered in discharge of his bail in this action to [or “in”] the common gaol of the county of —, pursuant to an order of the Honourable Mr. Justice [or “Baron”] —, dated the — day of — instant [or “last”], and that the said order has been duly lodged with the gaoler of the said goal, and that the

said defendant is now actually in the custody of such gaoler by virtue of the said order. Dated this — day of —, 1840.

Yours, &c.

C. D. the defendant [*or* “B. B. and J. B. the bail,”
or “one of the bail of the defendant C. D.” *or*
“D. A., attorney” *or* “agent” of C. D. &c.]

To Mr. P. A, plaintiff’s attorney.

[*See* 1 *Chit. Ar. Pr.* 630.]

10. *Affidavit of Render, &c. to County Gaol.*

In the Q. B. [*or* “C. P.”] (a).

Between A. B. plaintiff and C. D. defendant.

D. A. of —, gentleman, maketh oath and saith, that the above-named defendant was, on the — day of — instant [*or* “last”], rendered to [*or* “in”] the common gaol of the county of —, [*or* “to the custody of the sheriff of the county of —,”] in discharge of his bail in this action, pursuant to an order of the Honourable Mr. Justice [*or* “Mr. Baron”] —, dated the — day of — instant [*or* “last”], and at the time of such render the said order was duly lodged with the gaoler of the said gaol, [*or* “with the keeper of the said sheriff’s prison at —, in the said county,”] and that the said defendant is now actually in custody of such gaoler [*or* “keeper,”] by virtue of the said order. And this deponent further saith, that he did on the — day of — instant [*or* “last”] serve Mr. P. A., the plaintiff’s attorney [*or* “agent”] in this cause, with a true copy of the notice hereunto annexed [*annex it*], by delivering the same to the clerk [*or* “servant”] of the said Mr. P. A. at his chambers [*or* “house”] in —, in the county of —, [*or if the service was personal on the plaintiff’s attorney, state it accordingly ; see ante, 269, No. 3.*]

Sworn [*&c. see ante, 207.*]

[*See* 1 *Chit. Ar. Pr.* 631.]

11. *Habeas Corpus, to bring the Principal up, if in custody on a criminal account.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, (*or other officer in whose custody the party may be,*) greeting: We command you that you have the body of C. D. detained in our prison under your custody, as it is said, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name he may be called or known, before our right trusty and well-beloved Thomas Lord Denman, our chief justice assigned to hold pleas in our court before us [*or in C. P. “before our right trusty and well-beloved Sir Nicholas Conyngham Tindal, knight, our chief justice of the Bench ;” or in Exchequer, “before the Right Honourable James Lord Abinger, chief baron of our Exchequer”*] at his chambers in Rolls Garden, London, immediately after the receipt of this writ, to do and receive all and singular those things which our said chief justice [*or* “chief baron”] shall then and there consider of him in this behalf; and have there this writ. Witness —

(a) This is not necessary in the Q. B. or C. P. *See* 1 *Chit. Ar. Pr.* 629.
Exchequer, and perhaps not in the

(name of chief justice or chief baron), at Westminster, the — day of —, in the — year of our reign.

D. A. attorney.

[See 1 Chit. Ar. Pr. 625.]

2. PROCEEDINGS AGAINST BAIL TO THE ACTION.

1. *Ca. sa. against the Principal.*

[Same as usual, see the forms, ante, 190 to 198, and 1 Chit. Ar. Pr. 449.]

2. *Entry of the Recognizance upon the Roll, in Q. B.*

On —, the — day of —, A. D. 1840, (*the date of the capias*).

Witness, Thomas Lord Denman.

Middlesex, to wit. Our lady the queen sent to her sheriff of — (*the sheriff of the county into which the capias on which the defendant was arrested was issued*) her writ in these words (*a*); that is to say, Victoria [*&c. here copy the writ of capias to the teste inclusive, and then thus:*] And now at this day, to wit, on the — day of —, A. D. 1840, (*the day on which the recognizance is entered into,*) the said C. D., by D. A. his attorney, comes; and thereupon at the same time B. B. of —, tailor, and J. B. of —, butcher, come here in their proper persons, and become pledges and bail, and each of them becomes pledge and bail for the said C. D., that if the said C. D. shall happen to be convicted at the suit of the said A. B. in the action aforesaid, then the said bail consent, and each of them consents, that [as well the debt aforesaid as] all such damages as shall be adjudged to the said A. B. in this behalf, shall be made of their and each of their lands and chattels, and levied to the use of the said A. B. if it shall happen that the said C. D. shall not pay the said [debt and] damages, or render himself to the prison of the marshal of the Marshalsea of the said lady the queen, before the queen herself, on that occasion.

[See 1 Chit. Ar. Pr. 638.]

3. *The like, in C. P.*

In the Common Pleas.

On —, the — day of —, A. D. 1840, (*date of the capias*).

Middlesex, to wit. Our lady the queen sent to the sheriff of — (*the sheriff of the county into which the writ on which defendant was arrested was issued*) her writ in these words; that is to say, Victoria [*&c. here copy the capias to the teste inclusive, and then thus:*] And now here at this day, to wit, on the — day of —, A. D. 1840, (*the day on which the recognizance is entered into,*) before Sir Nicholas Conyngham Tindal,

(*a*) In the Queen's Bench the practice always was to enter it as taken in Court, though it is actually taken by a judge at his chambers, or by a commissioner in the country. In that Court it is not a record till entered. See *Chetley v. Wood*, 2 Salk. 564, 600,

659; 6 Mod. 42, S. C.; *Anon.* 7 Mod. 120; and see *Coreter v. Burke*, 5 East, 461; 2 Smith, 14, S. C.; 1 Chit. Ar. Pr. 638. By rule of all the Courts of H. T. 2 Will. 4, r. 1, s. 80, the form of the recognizance shall not express where it was taken.

knight, and his companions (a), justices of our said lady the queen of the Bench here, the said C. D. by D. A. his attorney comes, and thereupon come also here B. B. of —, tailor, and J. B. of —, butcher, in their proper persons, and acknowledge themselves, and each of them doth acknowledge himself to owe to the said A. B. the sum of £—, which they the said B. B. and J. B. for themselves and their heirs do consent and grant, and each of them for himself and his heirs doth consent and grant, shall be made of their and each of their goods and chattels, and to the use and behoof of the said A. B. be levied, upon condition that if judgment shall happen to be given in the court of the Bench aforesaid, in the action aforesaid, for the said A. B. against the said C. D., then the said C. D. shall pay and satisfy [the debt aforesaid and] all such damages as shall be adjudged to the said A. B. in this behalf, or render his body to the prison of the Fleet on that occasion.

4. *The like, in Exchequer.*

Pleas before the barons of the Exchequer at Westminster, on the — day of —, A. D. 1840 (*the date of the capias*), among the pleas of — term, (*the term in which, or if the recognizance was entered into in vacation, the term preceding which the recognizance was entered into*), in the year of our Lord 1840.

Middlesex, to wit. Our lady the queen sent to the sheriff of — (*the sheriff of the county into which the capias on which the defendant was arrested was issued*) her writ in these words: that is to say, Victoria, [*&c. here copy the writ of capias to the teste inclusive, and then thus:*] And now here at this day, to wit, on the — day of —, A. D. 1840 (*the day on which the recognizance was entered into*), the said C. D. by D. A. his attorney comes, and thereupon come also here B. B. of —, tailor, and J. B. of —, butcher, and become pledges and manucaptors, and each of them by himself becomes pledge and manucaptor for the said C. D., that if it shall happen that the said C. D. shall be convicted in the action aforesaid, then the said manucaptors grant, and each of them by himself doth grant, that [the debt aforesaid and] all such damages as shall be adjudged to the said A. B. in this behalf, shall be made of their and each of their lands and chattels, and levied to the use of the said A. B. if it shall happen that the said C. D. shall not pay the said [debt and] damages to the said A. B., or render himself to her majesty's prison of the Fleet on that occasion.

5. *Docket Paper, in Q. B.*

The entry [*or if you have before docketed an entry in or of the same term, then "the further entry"*] of P. A. gentleman, one &c. of — term, — Victoria.

Middlesex: Entry of recognizance of bail by B. B. and J. B., bail of C. D. defendant, at the suit of A. B. plaintiff. Roll —.

[See 1 Chit. Ar. Pr. 638.]

(a) In the Common Pleas, when bail are taken by a judge at chambers, or by a commissioner in the country, it was, before the rule of H. T. 2 W. 4, r. 1. s. 80, entered specially; it being in that Court a record immediately upon the first caption, and it bound the lands before it was filed at West-

minster; id. See *Rex v. Bingham*, 3 Y. & J. 101, 105; 1 C. & J. 245; S. C. Tidd, 9th edit. 278. But now by rule of that Court, "the form of the recognizance shall not express where it was taken." See 1 Chit. Ar. Pr. 638.

6. *Pracipe for the Scire Facias.*

Middlesex: Scire facias for *A. B.* against *B. B.* of —, tailor, and *J. B.* of the same place, butcher, bail for *C. D.*, in an action of debt [or “on promises”] for £—— debt, and £—— damages and costs, returnable on [a day certain in term].

P. A. attorney, —, 1840.

[See 1 *Chit. Ar. Pr.* 639.]

7. *Scire Facias upon a Recognizance in Q. B. where defendant has been held to bail.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of Middlesex, greeting: Whereas, on the — day of —, A. D. 1840, as of — term, in the — year of our reign, *B. B.* of —, tailor, and *J. B.*, of —, butcher, came into our court before us at Westminster, in their proper persons, and become pledges and bail, and each of them became pledge and bail for *C. D.*, that if the said *C. D.* should happen to be convicted at the suit of *A. B.* in an action of debt for £——, [or “on promises,”] there lately commenced or depending in the same court by and at the suit of the said *A. B.* against the said *C. D.*, then the said bail consented, and each of them consented that [as well the debt aforesaid as] all such damages as should be adjudged to the said *A. B.*, in that behalf, should be made of their and each of their lands and chattels, and levied to the use of the said *A. B.*, if it should happen that the said *C. D.* should not pay the said [debt and] damages to the said *A. B.* or render himself to the prison of the marshal of our Marshalsea before us, on that occasion: as by the record of the said recognizance still remaining in our said court before us at Westminster, more fully appears. And although the said *A. B.* afterwards, to wit, on the — day of —, A. D. —, in our said court, by the consideration and judgment of the same court, recovered against the said *C. D.* in that action the said debt of £——, as also £——, which in and by the said court were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of his said debt, as for his costs and charges by him about his suit in that behalf laid out and expended, [or in *assumpsit*, “£—— for damages he had sustained, as well by occasion of the not performing the promises aforesaid, as for his costs and charges by him about his suit in that behalf laid out and expended,”] whereof the said *C. D.* was convicted, as by the record and proceedings thereof, still remaining in our said court before us at Westminster aforesaid, more fully appears; and which said judgment, and also the said recognizance, are still in their full force, strength, and effect, and not in the least reversed, annulled, made void, or satisfied; yet the said *C. D.* hath not as yet paid the said [debt and] damages, or any part thereof, to the said *A. B.*, nor hath he rendered himself to the prison of the marshal of our Marshalsea before us, on that occasion, according to the form and effect of the said recognizance, as we have been informed and given to understand. Wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf; and we, being willing that what is just in this behalf should be done, command you* that, by honest and lawful men of your bailiwick, you make known to the said *B. B.* and *J. B.* that they be before us at Westminster, on — (a day certain), to show if they have or know, or if either of them hath or knoweth of any thing to say for themselves, or

himself why the said *A. B.* ought not to have execution against the said *B. B.* and *J. B.* of the [debt and] damages aforesaid, according to the force, form, and effect of the said recognizance, if it shall seem expedient for him so to do, and further to do and receive what out said court before us at Westminster aforesaid shall then consider of them in this behalf; and have there then the names of those by whom you shall so make known to them, and this writ. Witness [name of chief justice], at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 639, &c.]

8. *Alias Scire Facias (a).*

[Proceed as in the preceding *scire facias*, but, at the asterisk *, after the words "command you," say, as before we have commanded you."]

9. *Scire Facias upon a recognizance in C. P. where defendant has been held to Bail.*

[Proceed as in the form, ante, 274, No. 7, *mutatis mutandis*, reciting the recognizance (which see ante, 272, No. 3), the judgment, and the breach, and then thus:] Wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf; and we, being willing that those things which in our same court are rightly done and recognized, should be duly carried into execution, and that what is just in this behalf should be done, command you that by honest and lawful men of your bailiwick you make known to the said *B. B.* and *J. B.* that they be before our justices at Westminster, on — (the third day exclusive before the commencement of term, or any day, not being Sunday, between that day and the third day exclusive before the last day of the term) to show if they have or know, or if either of them hath or knoweth of anything, [&c. conclude as in the form, ante, 274, No. 7.]

10. *Alias thereon.*

[See the directions in form, supra, No. 8.]

11. *Scire Facias upon a Recognizance in Exchequer, where Defendant has been held to Bail.*

Victoria [&c. as ante, 274, No. 7], to the sheriff of Middlesex, greeting: Whereas *A. B.* in our court, before the barons of our Exchequer, at Westminster, heretofore, that is to say, on the — day of —, A.D. —, by the consideration and judgment of the same court, recovered against *C. D.* £—, for his damages which he had sustained, by reason of the not performing of certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.*, [or if in debt, alter this accordingly, see the form, ante, 274, No. 7,] whereof the said *C. D.* is convicted, as by inspecting the rolls of our Exchequer at Westminster more fully appears; and although the said judgment hath been given, yet execution of the said damages still remains to be made to the said *A. B.*: And whereas *B. B.* of —, tailor, and *J. B.* of —, butcher, heretofore, that is to say, on the — day of —, A.D. —, as of the term of — last past, in our said court before the barons of our said Exchequer at West-

(a) This alias *scire facias* is now rarely issued, see 1 Chit. Ar. Pr. 639.

minster, personally came, [*&c. to the end of the entry of the recognizance, ante, 273, No. 4, in the past tense, and then as follows:*] yet the said *C. D.* hath not paid the said damages to the said *A. B.*, nor rendered himself to our prison of the Fleet upon that occasion, as, by the information of the said *A. B.* in our said court, we have been given to understand: And we being willing that those things which in our said court are rightly done and acknowledged, should have due execution, command you, that by honest and lawful men of your bailiwick you make known to the said *B. B.* and *J. B.* that they be before the barons of our said Exchequer at Westminster, on ——— (*a day certain*), to show if they have or know, or if either of them hath or knoweth, of any thing to say for themselves or himself, why the said *A. B.* ought not to have execution against them, for the damages aforesaid, according to the force, form, and effect of the said recognizance, if it shall seem expedient for him so to do: And in what manner you shall execute this our writ make appear to the barons of our said Exchequer at Westminster, at the day aforesaid; and have there the names of those by whom you shall so make known to them, and this writ. Witness, James Lord Abinger, at Westminster, the ——— day of ———, in the ——— year of our reign.

12. *Alias Scire facias thereon,*

[*See the direction in the form, ante, 275, No. 8.*]

13. *Warrant on the Writ.*

To *K. L.* and *Z. P.* my bailiffs.

—— (to wit.) By virtue of her majesty's writ to me directed and delivered, I command you that you summon *B. B.* and *J. B.* that they be before our lady the queen [*or in C. P.* "before the justices of her majesty's court of the bench," *or in Exch.* "before the barons of her majesty's Exchequer"] at Westminster, on ———, to show if they have or know, or if either of them hath or knoweth of anything to say for themselves, or himself, why *A. B.* ought not to have execution against them for £—— damages [*or, "£—— debt and £—— damages"*] recovered by the said *A. B.* against the said *C. D.*, in the said court of our lady the queen, before the queen herself, [*or in C. P.* "before her said justices," *or in Exch.*, "before the barons of her Exchequer,"] according to the force, form, and effect of a certain recognizance entered into by the said *B. B.* and *J. B.* Dated the ——— day of ———, 1840.

S. S. esquire, sheriff.

14. *Summons upon the above Warrant.*

By virtue of her majesty's writ to the sheriff of ——— directed, and of the said sheriff's warrant to us thereon, we do hereby summon you that you be and appear in the court of our lady the queen, before the queen herself, [*or in C. P.* "before the justices of her majesty's court of the bench," *or in Exch.* "before the barons of her majesty's Exchequer,"] at Westminster, on ———, to show if you have or know, or if either of you hath or knoweth of anything to say for yourselves, or himself, why *A. B.* ought not to have execution against you for £—— damages [*or "£—— debt and £—— damages"*] recovered by the said *A. B.* against the said *C. D.* in the court of our lady the queen, before the queen herself, [*or in C. P.* "before her said justices," *or in Exch.* "before the

barons of her Exchequer,"] according to the force, form, and effect of a certain recognizance entered into by you. Dated the — day of —, A.D. —.

K. L.
Z. P.

To Mr. B. B. of —,
in the county of —,
and Mr. J. B. of —,
in the same county.

15. *Notice to Bail, of Scire Facias being lodged in Sheriff's Office against them, where they are not summoned.*

In the Q. B. [or C. P." or "Exch. of Pleas."]

Sirs,

Between A. B. plaintiff and C. D. defendant.

Take notice, that on the — day of — last, judgment was duly signed in this action against the defendant for the sum of £—, and that in order to compel you to pay the said sum of £—, or render the said defendant, I, on behalf of the plaintiff, did on — duly issue out of the Court of Queen's Bench [or "C. P." or "Exch. of Pleas'"] a writ of *capias ad satisfaciendum* on the said judgment, tested on —, and returnable on —, and directed to the sheriff of —, and I caused the said writ of *ca. sa.* to be left in the said sheriff's public office on —, and the same was duly entered four clear searching days next before the return day thereof in the public book at the said sheriff's office, pursuant to the rule and practice of the said court (a). And I did thereupon on — issue a writ of *scire facias* against you, the bail in this action, on your recognizance, directed to the sheriff of Middlesex, and tested on —, and returnable on —, and caused the same to be duly left in the said sheriff's public office, and to be entered in the public book there, on —, where the same is now lodged; and in default of your appearing thereto judgment will be obtained thereon against you. Dated this — day of —, 1840.

Yours, &c.

To Messrs. B. B. and J. B.
[the Bail.]

P. A. of —,
Plaintiff's attorney,
[or "agent."]

[See 1 Chit. Ar. Pr. 641.]

16. *Return to Scire Facias.*

[See the forms of a Return of Nihil, and also a Return of Scire Feci, post, Book 3, Part 1, Chap. 3.]

17. *Memorandum for Rule to appear in Q. B. or C. P.*

A. B.	}	Rule on scire facias.
v.		
B. B. and J. B.		
Bail of C. D.		

P. A. plaintiff's attorney [or "agent."]
—, 1840.

[See 1 Chit. Ar. Pr. 641.]

(a) This part of the form may state more than is absolutely requisite, but considering the strictness with which the courts construe proceedings against bail, it is recommended as a greater pre-

caution. See the form, post, where a copy of the writ of *scire facias* has been served with a notice of its having been lodged with the sheriff.

18. *Affidavit to obtain leave of Court or a Judge, to sign Judgment against Bail, on return of Nihil to one Scire Facias.*

In the Queen's Bench [or "C. P." or "Exch. of Pleas."]

Between { A. B. plaintiff,
and
C. D. defendant.

P. A. of —, attorney for the above-named plaintiff, maketh oath and saith, that on the — day of —, A. D. — [or "instant"] judgment was duly signed in this action against the defendant for the sum of £—, and that he this deponent, in order to compel the special bail in this action to pay the said sum of £—, or render the said defendant, did on — duly issue out of this honourable court a writ of *capias ad satisfaciendum* on the said judgment, tested on —, and returnable on —, and directed to the sheriff of —, being the venue laid in the said action, and the proper county in that behalf; and this deponent duly caused the said writ of *ca. sa.* to be left in the said sheriff's public office on —, being upwards of four clear searching days exclusive of any Sunday or holiday, the same being next immediately before the return thereof: and the said writ of *ca. sa.* was duly entered four clear searching days in the public book at the said sheriff's office, pursuant to the rule and practice of this honourable court, exclusive of any Sunday or holiday. And this deponent further saith, that thereupon, on —, he this deponent issued out of this honourable court a writ of *scire facias* against B. B. and J. B., the bail in this action, on their recognizance, directed to the sheriff of Middlesex, and tested on —, and returnable on —, and caused the same to be left in the said sheriff's public office, namely, upon and continually from the — day of —, being upwards of four clear searching days, exclusive of any Sunday or holiday, next immediately before the return-day thereof, and which writ was duly returned *non est inventus*, as well to the said B. B. as to the said J. B., nor have either of them yet appeared to the same. And this deponent further saith, that neither the said B. B. nor the said J. B. did, as this deponent is informed and verily believes, reside, nor were they or either of them within the said county of Middlesex at any time between the issuing of the said writ of *scire facias* and the day after the return-day thereof; and this deponent verily believes, that neither of them have been, nor could have been, legally summoned upon the said writ. And this deponent further saith, that he did, on —, personally serve the said B. B., one of the said bail, with a notice, a true copy whereof is hereunto annexed, [annex a copy of the notice served on the bail, see form, ante, 277, No. 15. If the service was not personal, state the mode of service accordingly; see form, ante, 279, No. 11.] And this deponent further saith, that he did, on —, personally serve the said J. B., the other of the said bail, with a similar notice. [If such service was not personal, state the mode of service accordingly (a).] And this deponent further saith, that he did, on —, enter a rule for the said B. B. and J. B. to appear to the said *scire facias* with one of the masters in the proper office of this honourable court. [State any other facts that would strengthen the application.]

Sworn [&c. ante, 207.]

P. A.

[See 1 Chit. Ar. Pr. 641.]

(a) If you could not serve the bail, state the endeavours to do so. See 1 form; post.

19. *Judge's Fiat thereon.*

B. }
v. } Let judgment be entered, and execution issue herein.
D. } [Judge's signature.]

20. *Præcipe for Rule for Judgment.*

Rule for judgment on scire facias.

B. against D.

P. A., plaintiff's attorney.
—, 1840.

21. *Rule thereon.*

B. } Unless something be said to the contrary, on — the — day
v. } of — instant, let judgment be entered on the scire facias.
D. } By the Court.

22. *Entry on Roll in Q. B. of Judgment by default where no Appearance.*

As yet of — term, (the term of which the sci. fa. is returnable, or if there are two sci. fas. the term of which the first scire facias is returnable,) in the — year of the reign of Victoria. Witness, Thomas Lord Denman.

Middlesex, to wit. Our lady the queen sent to her sheriff of Middlesex her writ close in these words, that is to say: Victoria, [&c. copy the scire facias, to the teste exclusive, and then proceed thus:] At which day, before our said lady the queen at Westminster, comes the said A. B. in his proper person; and the sheriff, to wit, S. S. and J. S. sheriff of Middlesex aforesaid, now here returns* that the said B. B. and J. B. have not, nor hath either of them, any thing in his bailiwick, whereby he could make known to them or either of them, as by the said writ he was commanded, nor were they or either of them found in the same* (a); and the said B. B. and J. B., although solemnly called, do not nor doth either of them come, but make default. Therefore on — it is considered that the said A. B. have execution against the said B. B. and J. B. of the debt and damages aforesaid, according to the force, form, and effect of the said recognizance, by the default of the said B. B. and

(a) If an alias scire facias was issued and returned nihil, here add, "and the said B. B. and J. B. do not nor doth either of them come. Therefore, as before, the said sheriff of Middlesex is commanded, that, by honest and lawful men of his bailiwick, he shall make known to the said B. B. and J. B., that they be before our said lady the queen on (the return day as in the alias sci. fa.) to show in form aforesaid, if &c. and further &c.; the same day is given to the said A. B. there &c. At which

day, before our said lady the queen at Westminster, comes the said A. B. in his proper person; and the sheriff of Middlesex aforesaid now here as before returns to our said lady the queen that the said B. B. and J. B. have not, nor hath either of them, any thing in his bailiwick whereby he could make known to them or either of them, as he was commanded as last aforesaid, nor were they or either of them found in the same; and the said B. B. and J. B. although solemnly called, &c."

J. B. &c. It is also considered by her majesty's court here, that the said *A. B.* do recover against the said *B. B.* and *J. B.* £—— for his costs and charges by him laid out about his suit in this behalf, by the said court now here adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided(a).

[*If the bail were summoned, and scire feci returned, and the bail do not appear, then instead of the entry of return of nihil, as above between the asterisks***, enter a return of *scire feci*, thus: "that by —— and ——, honest and lawful men of his bailiwick, he has given notice to *B. B.* and *J. B.* respectively to appear before our said lady the queen at the day and place in the said writ mentioned, to shew cause as by the said writ they are required, as by the said writ the said sheriff is commanded; and the said *B. B.* and *J. B.* although solemnly called, &c." [concluding as above.]

[See 1 *Chit. Ar. Pr.* 641.]

23. *The like, in C. P.*

In the Common Pleas.

—— term (*the term of which the sci. fa. is returnable (b),*) in the —— year of the reign of Victoria.

Middlesex, to wit: The sheriff of Middlesex was commanded, Whereas [*&c. reciting the scire facias, but in the past tense, to the words*] according to the force, form and effect of the said recognizance. And now here at this day comes the said *A. B.* by *P. A.* his attorney, and offers himself on the fourth day against the said *B. B.* and *J. B.*, in the plea aforesaid; and they, although solemnly demanded, do not, nor doth either of them come: and the sheriff of Middlesex aforesaid now here returns* that the said *B. B.* and *J. B.* have not, nor hath either of them, any thing in his bailiwick, whereby he could make known to them or either of them as above he was commanded, nor were they or either of them found in the same(c)*; and hereupon the said *A. B.* prays execu-

(a) 3 & 4 Will. 4, c. 42, s. 34.

(b) In C. P. where there are two scire faciases returnable in different terms, the first writ is entered on a roll of the term in which it was returnable, with the sheriff's return thereto and the award of the second writ, and in the following term the proceedings are entered over again with the sheriff's return to the second writ, and the prayer and award of execution on a roll of that term, beginning with an alias prout patet as follows: "*Middlesex*, to wit: Elsewhere as it appeareth of the term of —— last past on the —— roll it is thus contained," &c. See *Tidd's Forms*, 442.

(c) If an alias scire facias was issued and returned nihil, here add, "Therefore, as before, the said sheriff of Middlesex is commanded, that by honest and lawful men of his baili-

wick he shall make known to the said *B. B.* and *J. B.* that they be here on (*the return-day as in the alias sci. fa.*) to show in form aforesaid, if &c. and further &c.; the same day is given to the said *A. B.* here &c. At which day comes here the said *A. B.* by his attorney aforesaid, and offers himself on the fourth day against the said *B. B.* and *J. B.* in the plea aforesaid; and they, although solemnly demanded, do not nor doth either of them come; and the sheriff of Middlesex aforesaid now here, as before, returns that the said *B. B.* and *J. B.* have not, nor hath either of them, any thing in his bailiwick whereby he could make known to them or either of them, as he was commanded as last aforesaid, nor were they or either of them found in the same, and hereupon &c."

tion against the said *B. B.* and *J. B.*, that is to say, against the said *B. B.* of the said sum of £—— by him in form aforesaid acknowledged, and against the said *J. B.* of the said sum of £—— by him in form aforesaid acknowledged, according to the force, form and effect of the said recognizance to be adjudged to him, &c. Therefore on —— it is considered that the said *A. B.* have execution against the said *B. B.* and *J. B.* that is to say, against the said *B. B.* of the sum of £—— by him in form aforesaid acknowledged, and against the said *J. B.* of the said sum of £—— by him in form aforesaid acknowledged, according to the force, form and effect of the said recognizance, by the default of the said *B. B.* and *J. B.* &c. It is also considered by the justices here that the said *A. B.* do recover against the said *B. B.* and *J. B.* £—— for his costs and charges by him laid out about his suit in this behalf by the said justices here adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided (*a*).

[*If the bail were summoned, and scire feci returned, and the bail do not appear, then instead of the entry of return of nihil, as above between the asterisks**, enter a return of scire feci, thus:*] “that by —— and ——, honest and lawful men of his bailiwick, he has given notice to *B. B.* and *J. B.* respectively, to appear here at the day in the said writ mentioned, to show cause, as by the said writ they were required, as by the said writ the said sheriff was commanded: And hereupon the said *A. B.* prays execution,” [*&c. conclude as above.*]

[*If the bail appear, then the form is the same as post, 282, No. 31, mutatis mutandis.*]

24. *The like, in Exchequer.*

[*A form may be easily framed from those ante, 279, No. 22, and post, 282, No. 31. It should however commence with the placita, as in the form ante, 273.*]

25. *Docket Paper in Q. B.*

The entry [*or if any entry has been already docketed in the same term, then “the further entry”*] of *P. A.* gentleman, one &c. of —— term, —— Victoria.

Middlesex. Entry of a scire facias [*or “two scire faciases”*] in debt, between *A. B.* plaintiff and *B. B.* and *J. B.* bail of *C. D.*, with award of execution for £—— debt and £—— damages.

Roll ——

26. *Entry on Docket Roll, in C. P.*

Entry of scire facias [*or “of two scire faciases”*] against bail, with award of execution.

Middlesex. *A. B.* plaintiff, }
B. B. and *J. B.* bail of *C. D.* defendant. } Roll ——.

27. *Note of Appearance to Scire Facias.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against B. B. and J. B. bail of C. D.

I appear for the bail, upon the writ of scire facias [or "alias scire facias"] issued in this cause. Dated this — day of —, 1840.

To Mr. P. A. plaintiff's attorney,
[or "agent."]

Your's, &c.

*D. A. attorney for the said
B. B. and J. B.*

28. *Declaration in Scire Facias against Bail.*

[Same as the forms, post, in scire facias on revival of a judgment after a year and a day, except that instead of the word "recovery," say "recognizance."]

29. *Notice to plead.—Memorandum for Rule to plead, Demand of Plea.*
[See the forms, ante, 38.]30. *Plea, &c.*

[See the forms in scire facias, post, which may be readily made applicable to a plea by bail.]

31. *Entry on Roll in Q. B. of Judgment by default after Appearance, &c. want of a Plea.*

As yet of — term [&c. as ante, 279, No. 2.]

Middlesex, to wit. Our lady the queen sent to her sheriff of Middlesex her writ close in these words, that is to say: Victoria [&c. copy the declaration in scire facias to the end, and proceed on a new line thus:]

And the said B. B. and J. B. pray a day to imparl (a) to the said declaration of the said A. B., and it is granted to them &c.; and upon this a day is given to the parties aforesaid, before our lady the queen at Westminster, until —, that is to say, for the said B. B. and J. B. to imparl to the declaration aforesaid, and then to answer the same: At which day, before our said lady the queen at Westminster, comes the said A. B. in his proper person, and offers himself, on the fourth day, against the said B. B. and J. B. in the plea aforesaid: And the said B. B. and J. B. (although on that day solemnly demanded) come not, nor doth either of them come, nor do they or either of them show or say any thing why the said A. B. should not have execution against them and each of them respectively, for the aforesaid sum of £ —, according to the force, form, and effect of the aforesaid recognizance; whereby the said A. B. remains therein undefended against the said B. B. and J. B.: Therefore on — it is considered [&c. conclude as in the form, ante, 279.]

(a) The entry of continuances by way of imparlance, is put an end to by R. H. 4 Will. 4, r. 2. But although that rule extends to scire facias

upon a judgment, *Collins v. Beaumont*, 5 Dowl. 700, it may be doubted whether it extends to a scire facias upon a recognizance.

32. *Issue in Scire Facias against Bail, in Q. B.*

In the Queen's Bench.

On the — day of —, A. D. —, [or
“ — term, in the — year of the reign
of Victoria.”]

Middlesex, to wit. Our lady the queen sent to her sheriff of Middlesex her writ close in these words, that is to say: Victoria [&c. *here copy the declaration in scire facias.*]

And on — the said B. B. and J. B. by D. A. their attorney, come and say that the said A. B. ought not to have execution [&c. *copy the pleadings, beginning each with a new line, and conclude with the award of the venire facias, or by giving a day to produce the record on an issue of nul tiel record, in the common form.*]

33. *Notice of Trial.*

[Same as usual, see the forms, ante, 50 to 52.]

34. *Nisi Prius Record.*

[See the form, ante, 67.]

35. *Jury Process.*

[See the forms, ante, 68, 69, but instead of the words “ in an action on the case &c.” say “ on an issue in scire facias in debt.”]

36. *Postea.*

[Same as usual in debt, as ante, 92, except you state that] the jurors say upon their oath that [&c. *stating the finding of the jury*], in manner and form as the said A. B. hath within in pleading alleged. Therefore &c.]

37. *Judgment for Plaintiff after Verdict.*

In the Q. B. [or “ C. P.” or “ Exch. of Pleas.”]

On the — day of —, A. D. —.

Middlesex, to wit. Our lady the queen sent to her sheriff of Middlesex her writ close in these words, to wit: Victoria [&c. *copy the issue to the end of the award of the venire facias, and proceed thus:*] Afterwards the jury between the parties [&c. *as ante, 102, No. 1, concluding thus:*] Therefore it is considered that the said A. B. have his execution against the said B. B. and J. B. of the damages [or “ debt and damages”] aforesaid, according to the force, form, and effect of the said recognizance &c. It is also considered that the said A. B. do recover against the said B. B. and J. B. £—— for his costs and charges by him laid out about his suit in this behalf, by the court now here adjudged to the said A. B. and with his assent, according to the form of the statute in such case made and provided, and the said B. B. and J. B. in mercy &c.

Whereas we lately commanded our sheriff of Middlesex, that of the goods and chattels of *B. B.* and *J. B.*, the bail of *C. D.*, in his bailiwick, he should cause to be made £——, [or “a certain debt of £——,”] &c. (*reciting the whole of the fi. fa. to the end:*) and our said sheriff of Middlesex, on ——, [or “at that day,”] returned to us, that the said *B. B.* and *J. B.* had not, nor had either of them, any goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, which he could seize or take, or pay or deliver to the said *A. B.*, or whereof he could cause to be made the damages [or “debt and damages”], costs and charges, and interest aforesaid, or any part thereof: Whereupon, on the behalf of the said *A. B.* it is sufficiently testified in our said court before us, that the said *B. B.* and *J. B.* have sufficient goods and chattels in your bailiwick, whereof you may cause to be made the damages [or “debt and damages”], costs and charges, and interest aforesaid, and every part thereof: Therefore we command you, that of the goods and chattels of the said *B. B.* and *J. B.* in your bailiwick, you cause to be made the said £——, the damages aforesaid, [or “the said debt of £——,” and £—— the said damages,] and the said £——, the costs and charges aforesaid, together with such interest as aforesaid; and that you have the said monies before us at Westminster, immediately after the execution hereof, [or “on ——,”] to be rendered to the said *A. B.* for his damages [or “debt and damages”], costs and charges, and interest aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof; and have there then this writ. Witness [&c. conclude as in the preceding form.]

[See 1 Chit. Ar. Pr. 641.]

41. *Fieri Facias* against Bail, in *C. P.*, after Judgment on *Scire Facias*.

Victoria, [&c. as ante, 284, No. 39,] to the sheriff of Middlesex, greeting: We command you, that of the goods and chattels of *B. B.* of ——, one of the bail of *C. D.*, in your bailiwick, you cause to be made £——, and of the goods and chattels of *J. B.* of ——, another of the bail of the said *C. D.*, in your bailiwick, you cause to be made £——, which the said *B. B.* and *J. B.* heretofore, to wit, on ——, as of —— term, in the —— year of our reign, in our court, before Sir Nicholas Conyngham Tindal, knight, and his companions, then our justices of the Bench at Westminster, severally acknowledged to owe to *A. B.*, to be made of their and each of their lands and chattels, and to the use and behoof of the said *A. B.* be levied, in an action on promises [*as the action was*] to the damage of the said *A. B.* of £——, against the said *C. D.* in our same court of the Bench prosecuted; whereof the said *C. D.* was convicted, as by the record and proceedings thereof in our said court before our justices remaining, manifestly appears: And whereupon it is considered in our same court, that the said *A. B.* have his execution against the said *B. B.* and *J. B.* of the said several sums of £—— and £——, by them in form aforesaid acknowledged, whereof the said *B. B.* and *J. B.* are convicted: And also £——, which in our same court before our justices were adjudged to the said *A. B.* for his costs and charges which he hath been put unto on occasion of our writ of *scire facias* sued out against the said *B. B.* and *J. B.* at the suit of the said *A. B.* in that behalf, whereof the said *B. B.* and *J. B.* are also convicted; together with interest upon the said several sums of £——, £—— and £—— respectively, at the rate of

£4 per centum per annum, from the — day of —, A. D. —, [the day on which judgment was entered on the sci. fa., or if entered before 1st October, 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up against the said B. B. and J. B."] the day on which the judgment aforesaid was entered up against the said B. B. and J. B., and have those monies before our justices at Westminster immediately after the execution hereof [or "on —"], to be rendered to the said A. B. according to the form and effect of the said recognizance, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to our justices at Westminster, immediately after the execution thereof; and have there this writ. Witness, Sir Nicholas Conyngham Tindal, knight, at Westminster, the — day of —, in the — year of our reign.

42. *The like, in Exchequer.*

Victoria, [&c. as ante, 284, No. 39,] to the sheriff of Middlesex, greeting: We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and of the goods and chattels of B. B. and J. B. in your bailiwick, you cause to be made £—, which A. B. lately in our court before the barons of our Exchequer at Westminster recovered against C. D. for his damages which he had sustained, by reason of the not performing of certain promises then lately made by the said C. D. to the said A. B. as for his costs and charges by him about his suit in that behalf expended [or as the judgment was], whereof the said C. D. is convicted: And whereupon it is considered in our said court, that the said A. B. have his execution against the said B. B. and J. B. for his damages [or "debt and damages"] aforesaid, according to the form of their recognizance taken in our said court, as by inspecting the rolls of our said Exchequer appears to us: And also for £—, which in our same court before our barons were adjudged to the said A. B. for his costs and charges which he hath been put unto on occasion of our writ of scire facias sued out against the said B. B. and J. B. at the suit of the said A. B. in that behalf, as by inspecting the rolls of our said Exchequer also appears to us, together with interest upon the said several sums of £— and £—, at the rate of £4 per centum per annum, from the — day of — A. D. —, [the day on which judgment was entered up on the sci. fa., or if entered before 1st October, 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up against the said B. B. and J. B." on which day the judgment aforesaid was entered up against the said B. B. and J. B.; and have those monies before the barons of our said Exchequer at Westminster, immediately after the execution hereof [or "on —"], to be then and there paid to the said A. B. or his attorney in this behalf, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to the barons of our Exchequer at Westminster, immediately after the execution thereof; and have there this writ. Witness, James Lord Abinger, at Westminster, the — day of —, in the — year of our reign.

43. *Capias ad Satisfaciendum against Bail in Q. B. after Judgment on Scire Facias.*

Victoria, [&c. as ante, 284, No. 39,] to the sheriff of Middlesex, greeting: We command you, that you take *B. B.* and *J. B.*, the bail of *C. D.*, if they be found in your bailiwick, and them safely keep, so that you may have their bodies before us at Westminster immediately after the execution hereof [or "on —"], to satisfy *A. B.* £——, which the said *A. B.* lately in our court before us recovered against the said *C. D.* for his damages which he had sustained, as well on occasion of the not performing of certain promises then lately made by the said *C. D.* to the said *A. B.* [or if in debt "a certain debt of £——, which *A. B.* lately in our court before us at Westminster recovered against the said *C. D.*, and also £——, which in our said court before us were adjudged to the said *A. B.* for his damage which he had sustained, as well on occasion of the detaining of the said debt,"] as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record: And whereupon it is considered in our same court before us, that the said *A. B.* have his execution against the said *B. B.* and *J. B.* of the damages [or "debt and damages"] aforesaid, according to the force, form, and effect of a certain recognizance by them the said *B. B.* and *J. B.* acknowledged in our said court before us, for the said *C. D.* at the suit of the said *A. B.* in the action aforesaid, as also appears to us of record; and also to satisfy the said *A. B.* £—— for his costs and charges which he hath been put unto, on occasion of our writ of scire facias, sued out against the said *B. B.* and *J. B.* at the suit of the said *A. B.* in that behalf; whereof the said *B. B.* and *J. B.* are convicted, as also appears to us of record; together with interest upon the said several sums of £—— and £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. ——, [the day on which judgment was entered up on the sci. fa. or if entered up before 1st October, 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up against the said *B. B.* and *J. B.*"] on which day the judgment aforesaid was entered up against the said *B. B.* and *J. B.*; and have there then this writ. Witness —— (name of chief justice), at Westminster, the —— day of ——, in the —— year of our reign.

[See 1 Chit. Ar. Pr. 641.]

44. *The like, in C. P.*

[A form may be readily framed from the preceding form, and the fi. fa., ante, 285, No. 41.]

45. *The like, in Exchequer.*

[A form may be readily framed from the form, supra, No. 43, and the fi. fa., ante, 286, No. 42.]

46. *Testatum capias ad satisfaciendum against Bail in Q. B. after Judgment in Scire Facias.*

Victoria, [&c. as ante, 284, No. 39,] to the sheriff of ——, greeting: Whereas we lately commanded our sheriff of Middlesex that he should take *B. B.* and *J. B.*, the bail of *C. D.*, if they should be found in his

bailiwick, and them safely keep, so that he might have their bodies before us at Westminster immediately after the execution hereof [or "on —"], to satisfy *A. B.* [&c. *reciting the whole of the capias ad satisfaciendum.*] And our said sheriff of Middlesex on — [or "at that day"] returned to us, that the said *B. B.* and *J. B.* were not, nor was either of them, found in his bailiwick; whereupon on the behalf of the said *A. B.* it is sufficiently testified in our same court before us, that the said *B. B.* and *J. B.* lurk and secrete themselves in your county; therefore we command you, that you take the said *B. B.* and *J. B.* if they be found in your bailiwick, and them safely keep, so that you may have their bodies before us at Westminster immediately after the execution hereof [or "on —"], to satisfy the said *A. B.* his damages [or "debt and damages"], costs and charges and interest aforesaid; and have there then this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the — year of our reign.

[See 1 Chit. Ar. Pr. 641.]

3. PROCEEDINGS AGAINST BAIL IN ERROR.

1. *Entry of the Recognizance, on Error from the Q. B.*

As yet of — term (*the term of which the recognizance was taken*), in the — year of the reign of Queen Victoria. Witness, Thomas Lord Denman. Roll —.

England, to wit:—Be it remembered, that on —, in this same term, before our lady the queen at Westminster, come *B. B.* of —, tailor, and *J. B.* of —, butcher, in their proper persons, and, according to the form of the statute in such case made and provided, acknowledge themselves to owe, and each of them doth acknowledge himself to owe, to the said *A. B.* the sum of £— (*a*), and do submit and grant for themselves and their heirs, and each of them doth submit and grant for himself and his heirs, that the said sum of £— shall and may be made of their and each of their lands and chattels, and levied to and for the use of the said *A. B.*

The condition of the above recognizance is such, that whereas the said *A. B.* lately, in the said court of our lady the queen, before the queen herself, at Westminster, impleaded *C. D.*, in an action on promises: and such proceedings were thereupon had in the said court, that afterwards, on the — day of —, A.D. —, the said *A. B.*, by the consideration and judgment of the said court, recovered against the said *C. D.* in that action £— for his damages which he had sustained, as well on occasion of the not performing the said promises, as for his costs and charges by him about his suit in that behalf laid out and expended, [or if the action were debt, say, "in an action of debt for the sum of £—; and such proceedings were thereupon had in the said court, that afterwards, on the — day of —, A.D. —, the said *A. B.*, by the consideration and judgment of the said court, recovered against the said *C. D.* the said debt of £—, as also £—, which in and by the said court were adjudged to the said *A. B.* for damages which he has sustained, as well on

(a) See 1 Chit. Ar. Pr. 642.

occasion of the detention of the said debt, as for his costs and charges by him about his suit in that behalf laid out and expended,"] whereof the said *C. D.* was convicted, as by the record and proceedings thereof still remaining in the said court fully appears. And whereas the said *C. D.* hath brought a writ of error upon the judgment aforesaid, returnable before the justices of our lady the queen of the Bench, and the barons of her Exchequer of the degree of the coif, in the Exchequer Chamber, on —, [or if returnable in parliament, say "before our lady the queen in her parliament, without delay:"] If therefore the said *C. D.* shall prosecute the said writ of error with effect, and shall satisfy and pay unto the said *A. B.*, if the judgment aforesaid shall be affirmed, or the said writ of error be discontinued by his default, or the said *C. D.* be nonsuit therein, as well the [debt and] damages aforesaid, as also all such damages, costs, and charges as shall be awarded to the said *A. B.* by the said Court of Exchequer Chamber, [or "of our lady the queen in her parliament,"] by reason of the delay of execution of the judgment aforesaid on pretence of prosecuting the said writ of error, then this recognizance to be void, otherwise to be and remain in full force and effect.

[See 1 *Chit. Ar. Pr.* 643.]

2. *The like, on Error from the Common Pleas.*

In the C. P.

— term, (*the term of which the recognizance was taken,*) in the — year of the reign of Victoria.

Be it remembered, that on the — day of — in this same term, the Right Honourable Sir Nicholas Conyngham Tindal, knight, chief justice of our lady the queen of the Bench at Westminster, hath delivered here into court, with his own proper hands, a certain recognizance, together with a certain condition of the said recognizance, to be inrolled of record, and it is inrolled in these words:

B. B. of —, tailor, and *J. B.* of —, butcher, on the — day of —, 1840, come in their own proper persons before Sir Nicholas Conyngham Tindal, knight, and his companions, justices of our lady the queen of the Bench at Westminster, and acknowledge themselves, and each of them by himself severally doth acknowledge himself, to owe to *A. B.* the sum of £—, to be levied of their lands and chattels, and of the lands and chattels of each of them, to the use of the said *A. B.*

The condition of this present recognizance is such, that whereas the said *A. B.* lately in her majesty's Court of the Bench at Westminster, before Sir Nicholas Conyngham Tindal, knight, and his brethren, justices of the said court, by the consideration and judgment of the said court, recovered against *C. D.* £— for his damages which he had sustained on occasion of the not performing [&c. *as in the preceding forms, to the words*] whereof the said *C. D.* hath been convicted: and whereas the said *C. D.* hath brought a writ of error upon the judgment aforesaid, returnable before the justices of our lady the queen assigned to hold pleas in her court before her, and the barons of her Exchequer of the degree of the coif, in the Exchequer Chamber, on —, [or if returnable in parliament, say "before our lady the queen in her parliament, without delay:"] Now therefore, if the said *C. D.* doth by himself, or his sufficient surety, prosecute the said writ of error with effect, and also doth satisfy and pay unto the said *A. B.*, if the said judgment be affirmed, or the said writ of error be discontinued in his default, or he shall be nonsuited therein, the damages aforesaid already adjudged upon the said judgment, and all costs

and damages to be also awarded for the delay of execution of the said judgment, by means of the said writ of error, then this recognizance to be void and of no effect, or else to be and remain in full force and virtue.

3. *The like, on Error from the Exchequer of Pleas.*

Pleas before the barons of our lady the queen at Westminster, among the pleas of — term, (*the term of which the recognizance was entered into,*) in the — year of the reign of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, and in the year of our Lord 1840. Roll —.

Be it remembered, that *B. B.* of —, tailor, and *J. B.* of —, butcher, on the — day of —, in the — year of the reign of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, come before the Right Honourable James Lord Abinger, the lord chief baron, and other the barons, of her majesty's Court of Exchequer at Westminster, and acknowledge themselves, and each of them doth acknowledge himself, to owe unto *A. B.* the sum of £ — of lawful money of Great Britain, to be paid to the said *A. B.* or his certain attorney, executors, administrators and assigns: and if the said *B. B.* and *J. B.* do not pay the same, then they and each of them will and consent, that the said sum of money shall be levied and recovered of the lands and tenements, goods and chattels, of them the said *B. B.* and *J. B.* and each of them, to and for the use of the said *A. B.*, his executors, administrators, and assigns.

The condition of this recognizance is such, that whereas *C. D.* has brought a writ of error upon a judgment recovered against him, in her said majesty's said Court of Exchequer at Westminster, in an action on promises, [*or as the action is,*] at the suit of the said *A. B.* for the sum of £ — damages, as by the record thereof there remaining it doth and may more fully appear; which said writ of error is returnable before the justices of our lady the queen assigned to hold pleas in the court of our lady the queen, before the queen herself and the justices of our lady the queen of the Bench, on —, [*or if returnable in parliament, say "before our lady the queen in her parliament, without delay:"*] If therefore the said *C. D.* do prosecute the said writ of error with effect, and also pay and satisfy, if the said judgment be affirmed, or the said *C. D.* become nonsuit in the said writ of error, or suffer the same through his default to be discontinued to the said *A. B.*, his executors, administrators, or assigns, all and singular the damages aforesaid recovered by the said judgment, and also all such further costs and damages as shall be awarded for delay of execution, by reason of the said writ of error, then this recognizance to be void, otherwise to remain in full force and virtue.

Taken and acknowledged the day, year }
and place first above-mentioned, con- }
ditionally, before me. *Abinger.* }

B. B.
J. B.

4. *The like, on Error to House of Lords, after Judgment of Affirmance in the Exchequer Chamber.*

[*Proceed as in the preceding form to the statement of the condition, which should be thus:*] The condition of this recognizance is such, that whereas the above-named *A. B.* did, on the — day of —, A.D. —, recover a judgment in her majesty's Court of Exchequer, against *C. D.*

in an action on promises, for £—— damages, [*as the plea was,*] as by the record thereof there remaining it doth and may more fully appear: And whereas the said C. D. brought a writ of error upon the said judgment, returnable in the Exchequer Chamber, wherein the said judgment was affirmed, [*or if defendant was non-prossed for not assigning errors, say "but for want of prosecution thereof became nonsuit:"*] as by the record thereof also more fully appears: And whereas the said C. D. hath now brought a writ of error returnable in the high court of parliament, for reversing the said judgment: If therefore the said C. D. do prosecute the said last-mentioned writ of error with effect, or if the said judgment be affirmed by the lords in parliament, do satisfy the said A. B., his executors, administrators, and assigns, as well the said £—— as £—— costs and damages, allowed to the said A. B. for delay of execution, by reason of the said writ of error, returnable in the Exchequer Chamber aforesaid, and also all such costs and damages, sum and sums of money, as shall be awarded for delay of execution, by reason of the writ of error now brought in parliament, then this recognizance to be void, or else to remain in full force.

Taken and acknowledged {&c.
as in the preceding form.}

B. B.
J. B.

5. *Docket Paper, in Q. B.*

The entry [*or "further entry"*] of D. A. gentleman, one &c., of —— term, —— Victoria.

England. Entry of recognizance of bail in error, in a cause wherein A. B. is plaintiff, and C. D. defendant. Roll ——.

6. *Præcipe for the Scire Facias.*

Middlesex: Scire facias for A. B. against B. B. of ——, tailor, and J. B. of ——, butcher, bail of C. D. upon a writ of error from the Court of Queen's Bench to the Court of Exchequer Chamber, [*or as the case may be,*] in an action of [*&c. as the plea is; see ante, 274, No. 6,*] returnable on ——.

P. A. attorney, ——, 1840.

7. *Scire Facias upon Recognizance in Error, from Q. B. to the Exchequer Chamber.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of Middlesex, greeting: Whereas B. B. of —— tailor, and J. B. of —— butcher, on the —— day of ——, in the —— year of our reign, came in their proper persons before the Honourable ——, one of our justices assigned to hold pleas in our court before us, at his chambers in Rolls' Gardens, and, according to the form of the statute in such case made and provided, acknowledged themselves, and each of them separately did acknowledge himself, [*let this agree with the entry of the recognizance,*] to owe to A. B. the sum of £—— of lawful money of Great Britain, to be paid to the said A. B., his executors or assigns; and unless they should do so, the said B. B. and J. B. did grant and agree, and each of them for himself did grant and agree, that the said sum of £—— should be made of their and each of their lands and chattels, and levied to the use of the said A. B.; upon condition nevertheless, reciting that the said A. B. lately in

our court before us at Westminster, by the judgment of the same court, had recovered against *C. D.* £—— for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.*, as for his costs and charges by him about his suit in that behalf expended, [*or if in debt, see ante, 288, No. 1;*] whereof the said *C. D.* had been convicted, as appeared of record in our said court before us at Westminster; and also reciting that the said *C. D.* had brought a writ of error upon the judgment aforesaid, returnable before our justices of the Bench, and barons of our Exchequer of the degree of the coif, in our Exchequer Chamber at Westminster, on ———, the ——— day of ———, in the ——— year aforesaid: if therefore the said *C. D.* should prosecute the said writ of error with effect, and should also pay and satisfy to the said *A. B.*, if the said judgment should be affirmed, or the said writ of error be discontinued in his default, or he should be nonsuit therein, as well the damages [*or “debt and damages”*], costs and charges aforesaid, adjudged upon the said judgment, as also all such costs, charges and damages as should be awarded to the said *A. B.* for the delay of execution of the judgment aforesaid, by pretext of prosecuting the said writ of error, then that recognizance was to be void, or else to be and remain in full force and virtue: Which said recognizance the said justices afterwards, to wit, on the ——— day of ———, in the ——— year aforesaid, brought into our said court before us to be inrolled, and the same was then and there inrolled in our said court before us, as of ——— term, in the ——— year aforesaid, as by the record thereof now remaining in our said court before us at Westminster aforesaid manifestly appears: And such proceedings were had on our said writ of error in our Court of Exchequer Chamber aforesaid, before the justices of the Bench and barons of our Exchequer aforesaid, that afterwards, to wit, on ———, the ——— day of ———, in ——— term, in the ——— year of our reign, the said writ of error was duly nonprossed, [*or “the judgment aforesaid was in all things affirmed;”*] and £—— were then and there, in and by the said Court of Exchequer Chamber, adjudged to the said *A. B.* according to the form of the statute in such case made and provided, for his damages, costs and charges which he had sustained and expended, by reason of the delay of the execution of the judgment aforesaid, on pretence of prosecuting the said writ of error, as by the record and proceedings thereof, remitted by our said justices and barons from the said Court of Exchequer Chamber, into our said court before us at Westminster aforesaid, according to the form of the statute in such case made and provided, and now remaining in our said court before us at Westminster aforesaid, likewise appears to us of record: Nevertheless the said *C. D.* hath not yet paid to the said *A. B.* the said damages, [*or “debt and damages”*], costs and charges so as aforesaid adjudged upon the said first-mentioned judgment, or the damages, costs and charges aforesaid, so awarded as aforesaid, or any part thereof, as on the information of the said *A. B.* in our said court before us we have been given to understand: Wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, do command you, that by good and lawful men of your bailiwick you make known to the said *B. B.* and *J. B.* that they be before us at Westminster, on ———, to show if they have or know, or if either of them hath or knoweth, of any thing to say for themselves or himself, why the said *A. B.* ought not &c. [*conclude as in the form of scire facias, ante, 274, No. 7.*]

8. *The like, upon Recognizance in Error, from C. P.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of Middlesex, greeting: Whereas *B. B.* of —, tailor, and *J. B.* of —, butcher, on the — day of —, in the — year of our reign, came in their proper persons before Sir Nicholas Conyngham Tindal, knight, and his companions, justices of our lady the queen of the Bench at Westminster, and, according to the form of the statute in such case made and provided, acknowledged [*&c. proceed as in the entry, ante, 289, No. 2, in past tense*], and the condition of the above recognizance was such, that [*&c. then state the condition of the recognizance in the past tense, to the words*] otherwise to remain in full force and effect: which said recognizance and condition Sir Nicholas Conyngham Tindal, knight, our chief justice of the Bench at Westminster, afterwards, to wit, on the — day of — last past, delivered into our said Court of the Bench at Westminster, with his own proper hands, to be inrolled there of record, and which were inrolled accordingly, as by the record thereof, now remaining in our said Court of the Bench at Westminster, more fully appears. And such proceedings were had on the said writ of error, before the justices of our lady the queen assigned to hold pleas before us, and the barons of our Exchequer of the degree of the coif, in the Exchequer Chamber aforesaid, that afterwards, to wit, on —, the — day of — last past, the said writ of error was duly non-prossed, [*or “the said judgment was in all things affirmed,”*] and the sum of £— was then and there adjudged in and by the said Court of Exchequer Chamber to the said *A. B.*, according to the form of the statute in such case made and provided, for his damages, costs and charges which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid on pretence of the prosecution of the said writ of error, as by the record and proceedings thereof remitted by our said justices and barons, from the said Court of Exchequer Chamber, into our said court before our justices of the Bench at Westminster aforesaid, according to the form of the statute in such case made and provided, and now remaining in our said court before our justices of the Bench at Westminster aforesaid, likewise appears to us of record: Nevertheless the said *C. D.* hath not yet paid to the said *A. B.* the said damages [*or “debt and damages”*], costs and charges, so as aforesaid adjudged upon the said first-mentioned judgment, or the damages, costs and charges aforesaid, so awarded as aforesaid, or any part thereof, as on the information of the said *A. B.* in our said court, before our justices of the Bench, we have been given to understand: Wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf; and we being willing that what is just in this behalf should be done, do command you, that by good and lawful men of your bailiwick you make known to the said *B. B.* and *J. B.* that they be before our justices of the Bench at Westminster, on —, to show if they have or know, or if either of them hath or knoweth, of any thing to say for themselves or himself why the said *A. B.* ought not &c. [*conclude as in the form of scire facias, ante, 275, No. 9.*]

9. *The like, in Error, from the Exchequer.*

[*A form may be readily framed from those ante, 274, No. 7, 275, No 11, and ante, 272, No. 3.*]

10. *Execution thereon, in Q. B.*

[*The same as the forms upon a recognizance in Q. B. ante, 284, &c. No. 39, 43, 46, but instead of the words "as well on occasion &c. whereof the said C. D. is convicted, as appears to us of record," say "upon our certain writ of error, as appears to us of record."*]

11. *The like, in C. P.*

[*The same as the forms upon a recognizance in C. P. ante, 285, 287, No. 41, 44, but instead of "which heretofore before Sir Nicholas Conyngham Tindal, knight, and his companions, &c. whereof the said C. D. is convicted, as appears to us of record," say "which heretofore before Sir Nicholas Conyngham Tindal, knight, and his companions, justices of the court of our lady the queen of the Bench at Westminster, they the said B. B. and J. B. severally acknowledged to owe to A. B., and consented that the same should be made of their and each of their lands and chattels, and to the use and behoof of the said A. B. to be levied, upon our certain writ of error; and which said recognizance Sir Nicholas Conyngham Tindal, knight, our chief justice of the Bench at Westminster, afterwards with his own proper hands delivered into our said Court of the Bench at Westminster, to be inrolled there of record, and which was inrolled accordingly, as by the records thereof still remaining in our said Court of the Bench at Westminster fully appears; and whereupon it was considered" [&c. conclude as in the form, ante, 285, No. 41.]*

12. *The like, in Exchequer.*

[*A form may be readily framed from the direction contained in the two preceding forms, and see ante, 286, No. 42.*]

B O O K I.

PART III.

PROCEEDINGS UPON A FEIGNED ISSUE, OR SPECIAL CASE
STATED WITHOUT A TRIAL.1. *The Feigned Issue.*In the Q. B. [*or* "C. P." *or* "Exch."]

The — day of —, A. D. 1840.

— to wit. *A. B.*, by *P. A.* his attorney, complains of *C. D.* who has been summoned to answer the said *A. B.* by virtue of a writ (*a*) issued on — out of the court of our lady the queen, before the queen herself, [*or* "out of the court of our lady the queen, before her justices," *or* "out of the court of our lady the queen before the barons of her Exchequer."] For that whereas heretofore, to wit, on —, a certain discourse was had and moved by and between the plaintiff and the defendant, wherein a certain question then and there arose, [*here state the question to be tried, which, for instance, may be thus, "whether for every acre of land within the parish of &c. producing grass, whether mowed and made into hay or taken by the mouth of cattle, there hath been, from time whereof the memory of man is not to the contrary, paid by the occupier of such lands to the vicar of the said parish for the time being, twopence per acre in lieu of all tithes of such hay or grass,"*] and in that discourse the plaintiff asserted and affirmed, [*"that for every acre of land within the said parish of &c. producing" &c. same as the words between the inverted commas, supra, to the end;*] which assertion and affirmation of the plaintiff the defendant then contradicted and denied, and then asserted and affirmed the contrary thereof: And thereupon afterwards, to wit, on the day and year aforesaid, in consideration that the plaintiff, at the request of the defendant, had then paid to the defendant the sum of £—, he the defendant promised the plaintiff to pay him the sum of £—, if for every, [*&c. same as the words above between inverted commas:*] And the plaintiff in fact says, that for every acre of land [*&c. same as the words above between inverted commas, averring in the affirmative*], whereof the defendant afterwards, to wit, on the day and year aforesaid, had notice, whereby he the defendant then became liable to pay, and ought to have paid, to the plaintiff the said sum of —. Yet the defendant, not regarding his said promise, hath not as yet paid the said sum of £ —, or any part thereof, to the plaintiff, (although often requested so to do,) but hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to

(*a*) There does not appear to be any occasion to state that the defendant was summoned by any writ, and therefore this part of the commencement may be omitted.

the damage of the plaintiff of £——, and therefore he brings his suit &c. And the defendant, by *D. A.* his attorney, says, that for every [*&c. negating the first assertion between inverted commas*], in manner and form as the plaintiff hath above in that behalf alleged, and of this the defendant puts himself upon the country; and the plaintiff doth the like: Thereupon the sheriff is commanded that he cause to come here on —— twelve &c., by whom &c., and who neither &c., to recognize &c., because as well &c.

[*See 1 Chit. Ar. Pr. 645.*]

2. *Notice of Trial; Nisi Prius Record; Jury Process; and Postea.*

[*The same as in ordinary cases, see ante.*]

3. *Order of Judge for a special Case, without proceeding to Trial.*

B. } Upon hearing the attornies [*or “agents”*] on both sides, and by
v. } consent, I order that the parties in this action shall be at liberty to
D. } state the facts of the case in the form of a special case for the
 opinion of the court, they agreeing that a judgment shall be entered for the plaintiff or defendant, by confession or of nolle prosequi, as the case may be, immediately after the decision of the case, or otherwise as the court may think fit, and that in the meantime all further proceedings be stayed.

(*Judge's or Baron's signature.*)

[*See 1 Chit. Ar. Pr. 649.*]

4. *The Special Case thereon.*

In the Q. B. [*or “C. P.” or “Exch. of Pleas.”*]

Between *A. B.* plaintiff
 and

C. D., J. B. and J. E. defendants.

This is an action of trespass brought by the plaintiff against the defendants for an assault and false imprisonment; the defendants have pleaded the general issue, and issue having been joined thereon; by the consent of *P. A.* attorney for the plaintiff, and *D. A.* attorney for the defendant, and by the order of Mr. Justice ——, the following case has been stated for the opinion of the court.

The plaintiff is a carpenter and joiner living at —— in the county of Gloucester. The defendants, at the time of the alleged imprisonment, were, and still are, justices of the peace for the said county of Gloucester.

On the 1st day of May, 1834, one *A. W.* made an information and complaint in writing against the plaintiff before the defendant *D. A.*, of which the following is a copy. [*Here set it out.*]

In consequence of the above complaint, the plaintiff was summoned to appear and answer the same before the justices who might be sitting at the public office, Cheltenham, on the 3d day of May then instant, which was the next day of petty sessions. The plaintiff appeared, in obedience to the summons, before the three defendants, who then were the sitting magistrates. *A. W.* also appeared in the presence of plaintiff, and before the defendants made a statement upon oath, of which a minute was taken by the clerk to the magistrates in the minute-book of proceedings before the magistrates, which is kept at the said public office. The following is a copy of such minute. [*Here set it out.*]

The defendants then heard the statement of the plaintiff in answer to *A. W.*'s complaint, and which did not satisfy the defendants that the said wages were not due as deposed by *A. W.* The defendants therefore ordered and adjudged him the plaintiff to pay the same (2*l.* 2*s.* 8*d.*), together with 4*s.* 6*d.* costs, forthwith. The plaintiff then stated that he could not pay those monies, and that he had not sufficient goods and chattels whereon the same could be levied by distress.

The defendants then committed the plaintiff to prison, by warrant in writing under their hands and seals, for two calendar months, unless the said sums of 2*l.* 2*s.* 8*d.* and 4*s.* 6*d.* should be sooner paid, and the following is a copy of that warrant. [*Here set it out.*]

The plaintiff remained in prison eight days and then paid the said monies and was discharged.

The questions for the opinion of the court are—

First,—Whether the defendants were empowered by the statute of the 20 Geo. 2, c. 19, and the 4 Geo. 4, c. 34, or by any other statute or statutes, to order and adjudge the plaintiff to pay the said wages or sums of 2*l.* 2*s.* 8*d.* and 4*s.* 6*d.* in manner before mentioned.

Secondly,—Whether upon non-payment of those monies, and upon the plaintiff's confession that he had not sufficient goods and chattels whereon the same might be levied, the defendants were empowered by the statute 5 Geo. 4, c. 18, or by any other statute or statutes, to commit the plaintiff to prison for two calendar months, unless the said monies should be sooner paid.

If the court shall be of opinion in the affirmative thereof, then the plaintiff agrees that a judgment shall and may be entered against him of *nolle prosequi* immediately after the decision of this case, or otherwise, as the court may think fit; but if the court shall be of a contrary opinion, then the defendants agree that judgment shall be entered against them by confession for 5*l.* damages, immediately after the decision of this case, or otherwise as the court may think fit, and that judgment shall be entered accordingly.

[*Counsel's Signatures.*]

[*See 1 Chit. Ar. Pr. 649.*]



BOOK II.

PART I.

PROCEEDINGS UPON PLEAS IN ABATEMENT.

1. *Affidavit of Misnomer, to ground Application to compel an Amendment of Declaration for it, &c.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between { A. B. plaintiff
and
C. D. (sued as
C. F.) defendant.

C. D. of —, in the county of —, the defendant, and against whom the plaintiff hath declared by the name of C. F., maketh oath and saith, that he is named and called by the name of C. D., and by the surname of D. hath always hitherto been named and called; and that he is not nor never was called or known by the said surname of F. [or if the misnomer be in the christian name alter this accordingly.]

Sworn [&c. as ante, 207.]

[Sec 2 Chit. Ar. Pr. 652.]

2. *Plea in Assumpsit, of Non-joinder of a Co-defendant.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A.D. —.

C. D. } And the defendant, by D. A. his attorney, prays judgment
ats. } of the said writ and declaration, because he says that the said
A. B. } several alleged promises in the said declaration mentioned.
were and each of them was made by the defendant jointly with one E. F.
who is still living, and who [at the time of the commencement of this
suit (a) was and still] is resident within the jurisdiction of this court, and
not by the defendant alone; and this the defendant is ready to verify;
wherefore inasmuch as the said E. F. is not named in the said writ and
declaration together with the defendant, the defendant prays judgment of
the said writ and declaration, and that the same may be quashed, &c.

[Sec 2 Chit. Ar. Pr. 651, &c.]

3. *Affidavit of Truth of Plea in Abatement.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. D. of —, [tailor,] the defendant in this cause (b) maketh oath and

(a) It should seem that the 3 & 4 *quere.*
Will. 4, c. 42, s. 8, 2 Chit. Ar. Pr. (b) As to who may make the aff-
651, requires this statement; *sed* davit &c., see 2 Chit. Ar. Pr. 654

saith, that the plea hereunto annexed is true in substance and fact [and if the plea be of a non-joinder of a party who ought to be joined as a defendant, add "and that E. F. in the said plea within named, resides at No. —, in — street, in the parish of —, in the county of —."] (a).

Sworn [&c. as ante, 207.]

C. D.

4. Replication to Plea of Non-joinder, denying the Joint Contract.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A.D. —.

A. B. } And the plaintiff saith that his said writ and declaration by
v. } reason of any thing in the said plea above alleged, ought not to
C. D. } be quashed; because he saith that the said several promises
were not made by the defendant jointly with the said E. F. in manner
and form as the defendant hath above in his said plea alleged, and this
the plaintiff prays may be inquired of by the country, &c.

5. Issue.

[Same as usual, see forms, ante, 43, &c. except that the award of venire is thus:] Thereupon as well to try the said issue above joined between the parties, as to inquire of and assess the damages of the plaintiff on occasion of the not performing of the said promises (as the form of action is) in the said declaration mentioned, in case the said issue shall be found for the plaintiff, the sheriff is commanded that he cause to come here on the — day of —, twelve &c., by whom &c., and who neither &c., to recognize &c., because as well &c.

6. Jury Process.

[Same as forms, ante, 68, &c. except that instead of the words "in an action on promises" &c., say "as well to try the issue joined between them in an action on promises," (as the form of action is,)] as to inquire of and assess the damages of the plaintiff, by reason of the not performing of the said promises (as the form of action is) in the declaration in that behalf mentioned, in case the said issue shall be found for the plaintiff [&c. concluding the jury process as in the forms, ante, 68.]

7. Postea for Plaintiff.

[Same as the forms, ante, 92, to the asterisk *, and then state the negative or affirmative of the issue as it is found for the plaintiff, and in the terms adopted by the pleadings, which in a plea of non-joinder may be thus:] "say upon their oath that the said several promises in the said declaration mentioned, were not made by the defendant jointly with the said E. F. in manner and form as the defendant hath within in that behalf alleged:" and they assess the damages [&c. conclude as usual, see forms, ante, 92.]

8. Judgment and Execution for Plaintiff.

[Same as usual. See forms, ante, 102, &c., 148, &c. See 2 Chit. Ar. Pr. 656.]

(a) The 3 & 4 Will. 4, c. 42, s. 8, must be stated with convenient certainty. See 2 Chit. Ar. Pr. 651.

9. *Postea, for Defendant.*

[Same as the forms, ante, 87, to the asterisk*, and then state the negative or affirmative of the issue as it is found for defendant, and in the terms adopted by the pleadings, which in a plea of non-joinder may be thus:] "say upon their oath, that the said several promises in the said declaration mentioned, were made by the defendant jointly with the said E. F. in manner and form as the defendant hath within alleged." Therefore &c.

10. *Judgment for Defendant.*

Therefore it is considered that the said writ be quashed &c., and that the defendant do go thereof without day &c. And it is further considered by the court here, that the defendant do recover [&c. conclude as in the form, ante, 108.]

[See 2 Chit. Ar. Pr. 656.]

11. *Execution for Defendant.*

[Same as usual. See the forms, ante, 201.]

12. *Proceedings on a Demurrer to a Plea in Abatement.*

[See forms, post, 304.]

13. *Commencement of a Declaration after a Plea in Abatement of Non-joinder, where the new Action is against the Party not joined in the former one. (a)*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A.D. 1840.

(Venue.)—A. B. by E. F. his attorney, [or "in his own proper person &c."] complains of C. D. and G. H. who have been summoned to answer the said A. B., and which said C. D. has heretofore pleaded in abatement the non-joinder of the said G. H. &c.

[See 2 Chit. Ar. Pr. 657, &c.]

(a) This form is prescribed by Rule H. T. 4 Will. 4, r. 20.

BOOK II.

PART II.

PROCEEDINGS UPON DEMURRER.

1. *A Demurrer to a Declaration (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A. D. 1840.

The matters of law intended to be argued are specially set forth in the body of the demurrer, [or if the demurrer be a general demurrer, then state in this marginal note shortly one or more of the grounds of demurrer (b).]

D. } And the defendant by D. A. his attorney
ats. } [or "in person"] says, that the said declara-
B. } tion [or if to a count only, "the said —
count of the said declaration"] is not sufficient in law.

[If the demurrer be special, add the causes of demurrer thus:] And the defendant states and shows to the court here the following causes of demurrer to the said declaration [or "to the said — count of the said declaration"], that is to say, that &c. (here state the particular causes and conclude thus:) And also that the said declaration [or "— count of the said declaration"] is in other respects insufficient, &c.

[See 2 Chit. Ar. Pr. 658.]

2. *Demurrer to a Plea, or Rejoinder.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A. D. —.

B. } And the plaintiff saith, that the said plea [or "rejoinder"] is not
v. } sufficient in law. [If there be special grounds of demurrer, state
D. } them as directed in the preceding form. Take care also to state
in the margin of the demurrer, whether general or special, the grounds for
it, as there also is directed, and see the notes to that form.]

[The like, to a Replication.]

[See the form, supra, No. 1, mutatis mutandis.]

(a) By R. H. 4 W. 4, r. 14, the form of a demurrer shall be as follows:—"The said defendant by — his attorney [or 'in person,' &c. or 'plaintiff'] says, that the declaration [or 'plea' &c.] is not sufficient in law; showing the special causes of

demurrer, if any."

(b) As to the necessity for this statement in the margin of the demurrer, and how it is to be made, and the consequence of omission, see R. H. 4 W. 4, r. 2; 2 Chit. Ar. Pr. 658.

3. Joinder in Demurrer (a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A. D. —.

B. } The plaintiff [or "defendant"] says, that the declaration [or
 v. } "plea &c."] is sufficient in law.
 D. }

4. Demand of Joinder in Demurrer (b).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

B. } The defendant [or "plaintiff"] demands a joinder in demurrer
 v. } in this cause, or judgment. Your's, &c.
 D. }

To Mr. P. A. plaintiff's
 [or "D. A. defendant's"] attorney
 [or "agent."]

D. A. defendant's
 [or "P. A. plaintiff's"]
 attorney [or "agent."]
 —, 18—.

[See 2 Chit. Ar. Pr. 660.]

5. Notice of Inquiry on back of Demurrer or Joinder.

See forms, post; and see 2 Chit. Ar. Pr. 661.]

6. Demurrer Book.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. — (the date of the declaration.)

— (Venue) to wit. A. B. by P. A. his attorney, [or "in his own proper person," or "by E. F., who is admitted by the court here to prosecute for the said A. B., who is an infant within the age of twenty-one years, as the next friend of the said A. B." as the case may be.] complains of C. D., who has been summoned to answer the said A. B. by virtue [or if the action was commenced by *capias* or *detaimer* before the 1st of October, 1838, say, "who has been arrested," or "detained in custody by virtue," or "served with a copy"] of a writ issued on (date of first writ) the — day of —, in the year of our Lord 18—, out of the court of our lady the queen, before the queen herself at Westminster, [or "out of the court of our lady the queen, before her justices at Westminster," or "out of the court of our lady the queen, before the barons of her Exchequer at Westminster," as the case may be](c). For that [copy the declaration from these words to

(a) By R. H. 4 W. 4, r. 14, the form of a joinder in demurrer shall be as follows: "The said plaintiff [or 'defendant'] says, that the declaration [or 'plea,' &c.] is sufficient in law."

(b) By R. H. 4 W. 4, no rule for joinder in demurrer is requisite, but the party demurring may demand a joinder in demurrer, and the opposite party will be bound, in four days after such demand, to deliver the same, otherwise judgment. See 2 Chit. Ar. Pr. 660, 661.

(c) This form of the commencement of a demurrer-book is made conformable to the form of the commencement of an issue in fact: which latter form is prescribed by one of the late rules of H. T. 4 Will. 4, see *ante*, 93. It is conceived that the courts intended such form as a general precedent to be adopted in all cases as far as it could be. Perhaps it will suffice if the commencement of the form stopped at the asterisk *, and proceeded from thence to the statement of the declaration.

the end, and the demurrer or plea and demurrer to the joinder in demurrer inclusive, stating the days when they were respectively delivered. But when the demurrer is to part only of the declaration or other proceedings, then copy those parts only of the declaration or pleadings to which the demurrer relates. See 2 Chit. Ar. Pr. 661. Also in the margin of the demurrer books the party demurring or intending to object on the argument to the opposite pleadings must state his objections and points intended to be argued; see *id.* 664. Since the rule of H. T. 4 W. 4, r. 2, s. 2, the demurrer-book should not conclude as formerly with an entry of *curia advisari vult*. See 2 Chit. Ar. Pr. 661.]

7. Notice of setting down the Demurrer for Argument (a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that the demurrer to be argued in this case was on this day duly set down for argument for the — day of — next.

Your's, &c.

To Mr. —
defendant's [or "plaintiff's"]
attorney [or "agent."]

A. B. plaintiff's [or "defendant's"]
attorney [or "agent."]
—, A.D. 1840.

8. *Præcipe* for Rule for Judgment (b).

B. } Rule for judgment on demurrer.

v. } P. A. plaintiff's [or "D. A. defendant's"] attorney [or "agent."]
D. } —, 1840.

9. Rule for Judgment.

B. } Unless something be said in arrest of judgment on the — day
v. } of — instant, let judgment be entered for the plaintiff, [or "de-
D. } fendant."]

[See 2 Chit. Ar. Pr. 665.]

10. Judgment for Plaintiff on Demurrer to a Declaration or Replication, where there is no Issue in Fact.

[Proceed as in the demurrer-book to the end, see the form, ante, 302; then enter the judgment thus:] And hereupon on — come here, as well the plaintiff as the defendant, by their respective attor-

(a) By R. H. 4 W. 4, (as to Practice,) reg. 6, "no motion or rule for a concilium shall be required; but demurrers as well as all special cases and special verdicts, shall be set down for argument at the request of either party, with the clerk of the rules in the Queen's Bench and Exchequer,

and a secondary in the Common Pleas [now one of the masters], upon payment of a fee of one shilling; and notice thereof shall be given forthwith by such party to the opposite party." See 2 Chit. Ar. Pr. 664, 665.

(b) Query; if this rule for judgment is now necessary?

nies aforesaid; whereupon all and singular the premises being seen, and by the court(a) here fully understood, and mature deliberation being thereupon had, it appears to the said court here† that the declaration [or “replication”] aforesaid is sufficient in law*; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises; and hereupon, [*&c. conclude as post, 343, No. 8, if the damages are assessed by the court; or if assessed on a writ of inquiry, “but because it is unknown,” &c., and conclude as post, 328, No. 1; or if the judgment be in an action of debt, then conclude it from the above asterisk thus**: “Therefore it is considered that the plaintiff do recover against the defendant his said debt, and also £—— for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, by the court adjudged to the plaintiff, and with his assent.”]

[*See 2 Chit. Ar. Pr. 665.*]

11. *The like, on a demurrer to a Plea or Rejoinder.*

[*Same as the preceding form to the †, and then thus:*] that the said plea [or “rejoinder”] is not sufficient in law; wherefore the plaintiff [*&c. conclude as in the preceding form.*]

12. *The like, on Demurrer to a Replication to a Plea in Abatement.*

[*Same as the form, ante, 303, No. 10, to the †, and then thus:*] that the replication aforesaid is sufficient in law; therefore it is considered that the defendant do further answer to the said writ of the plaintiff‡. And it is further considered by the court here that the plaintiff do recover against the defendant £—— for his costs and charges (b) by him about his suit in this behalf expended, by the said court here adjudged to the plaintiff, and with his assent, according to the form of the statute in such case made and provided; and that the plaintiff have execution thereof &c. And thereupon a day is given to the parties aforesaid, before our said lady the queen at Westminster, on ——, [*or in C. P. or Exchequer, “here until ——,”*] that is to say, for the defendant to answer further to the said writ of the plaintiff. At which day come here the parties aforesaid by their respective attornies aforesaid. And hereupon the defendant, by D. A. his attorney aforesaid, says that [*&c. enter the plea, &c. as usual.*]

[*See 2 Chit. Ar. Pr. 656, 667.*]

13. *The like, on Demurrer to a Plea in Abatement.*

[*Same as the form, ante, 303, No. 10, to the †, and then thus:*] that the said plea is not sufficient in law: Therefore it is considered that the de-

(a) It is conceived that this form of the judgment is fully sufficient in all the courts without unnecessarily saying in the Common Pleas that the justices, or in the Exchequer that the barons, give the judgment. Such unnecessary distinction is not adopted

in the form of the judgment given on a postea by the rule of H. T. 4 Will. 4.

(b) The 3 & 4 W. 4, c. 42, s. 34, gives the plaintiff these costs. See 2 Chit. Ar. Pr. 667.

defendant do answer further to the said writ of the plaintiff. And [&c. conclude as in the preceding form, from the †].

14. *Judgment for Defendant, on Demurrer to a Declaration or Replication.*

[Same as the form, ante, 303, No. 10, to the †, and then thus:] that the said declaration [or "replication"] is not sufficient in law: Therefore it is considered that the plaintiff take nothing by his said writ [&c. conclude as in the judgment for a defendant, ante, 108, No. 23.]

15. *The like, for Defendant, on Demurrer to a Plea or Rejoinder.*

Same as the form, ante, 303, No. 10, to the †, and then thus:] that the said plea [or "rejoinder"] is sufficient in law: Therefore it is considered that the plaintiff take nothing by his said writ [&c. conclude as in the judgment for a defendant, ante, 108, No. 23.]

16. *The like, for a Defendant, on Demurrer to a Plea in Abatement.*

[Same as the form, ante, 303, No. 10, to the †, and then thus:] that the said plea is sufficient in law: Therefore it is considered that the said writ be quashed &c. And it is further considered [&c. conclude as in the judgment for a defendant, ante, 108, No. 23] (a).

17. *The like, for a Defendant, on Demurrer to a Replication to a Plea in Abatement.*

[Same as the form, ante, 303, No. 10, to the †, and then thus:] that the said replication is not sufficient in law: Therefore it is considered that the said writ be quashed &c. And it is further considered [&c. conclude as in the judgment for a defendant, ante, 108, No. 23] (a).

18. *Judgment where there are Issues in Fact and Issues in Law, and where the Issue in Law is determined first (b).*

[Proceed as in the demurrer book, ante, 302, No. 6, setting forth all the pleadings, then proceed thus:] And hereupon on ——— come here the parties aforesaid, by their attornies aforesaid; whereupon all and singular the premises aforesaid, whereon the said parties have put themselves upon the judgment of the court, being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the said [second] count of the said declaration is sufficient

(a) The 3 & 4 Will. 4, c. 42, s. 34, gives the defendant his costs. See 2 Chit. Ar. Pr. 667.

(b) See 2 Chit. Ar. Pr. 666. This form will suffice, though a term inter-

venes between that after which the issue was joined, and that of the judgment in demurrer, the entry of continuances being no longer requisite.

in law, (*this must be according to the demurrer and judgment on it :*) Wherefore the plaintiff ought to recover against the defendant his damages by reason of the premises in the said [second] count mentioned : [*or if the action be in debt, say, "Therefore it is considered that the plaintiff do recover against the defendant his said debt of £——, in the said second count of the said declaration mentioned, together with his damages by him sustained on occasion of the detention thereof, &c."*] But because it is unknown to the court here what damages the plaintiff hath sustained on occasion thereof, and because it is convenient and necessary that there be but one taxation of damages in this suit, therefore let the giving of judgment in this behalf against the defendant be stayed, until the trial of the said issue above joined between the said parties to be tried by the country : And thereupon as well to try the said last-mentioned issue, as to inquire of and assess the damages which the plaintiff hath sustained on occasion of the premises [*or "in debt say "on occasion of the detention of the said debt"*] in the said [second] count of the said declaration mentioned, the sheriff is commanded that he cause to come here, on ——, twelve &c., by whom &c., and who neither &c., to recognize &c., because as well &c. Afterwards the jury between the parties aforesaid is respited until the —— (*the return day of distringas or habeas corpora*) unless —— shall first come on the —— (*day of sittings or nisi prius*) day of ——, at ——, according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear. Afterwards on —— (*day of signing final judgment*) come the parties aforesaid by their respective attornies aforesaid; and ——, before whom the said issue was tried and damages assessed, hath [*or "have"*] sent hither his [*or "their"*] record had before him [*or "them"*] in these words, to wit: Afterwards, that is to say [*&c. as in the postea, which may be as ante, 92, &c. No. 1, &c. to the statement of the finding of the jury, which may be thus :*] "As to the issue within joined between the said parties, to be tried by the country, say upon their oath that the defendant did promise in manner and form as the plaintiff hath in the said first count of the said declaration within complained against him; and they assess the damages of the plaintiff on occasion of the not performing the promises in the said first count mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to 40s." [*Let this agree with the verdict; also state the assessment by the jury of the damages on the facts in the pleading demurred to, according to the demurrer and nature of the action, which in assumpsit might be thus*]: And the jurors aforesaid, upon their oath aforesaid, also say that they assess the damages of the plaintiff, by him sustained on occasion of the not performing the promise in the said second count of the said declaration within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for his costs and charges last aforesaid to 40s. [*Then state the judgment, which may be thus :*] "Therefore it is considered that the plaintiff do recover against the defendant his said damages, costs and charges by the jurors aforesaid in form aforesaid assessed, and also" [*&c. conclude the final judgment as usual, according to the nature of the action. See the form, ante, 102, &c. No. 1, &c.*]

19. *Judgment where there are Issues in Fact and Issues in Law, and where the Issue in Fact is determined first (a).*

[*Proceed as in the issue, as ante, 46, No. 9, setting forth all the pleadings, and award of venire with a unica taxatio (b), then proceed thus:*] Afterwards the jury between the parties aforesaid is respited until the —, (*return day of distringas or habeas corpora,*) unless — shall first come on the — (*day of sittings or nisi prius*) day of — at —, according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear. At which — day of —, A. D. —, come here the parties aforesaid by their attornies aforesaid; and (*the chief justice or justices of assize*) before whom the said issue whereof the said parties have put themselves upon the country was tried, hath [*or “have”*] sent hither his [*or “their”*] record, had before him [*or “them”*] in these words, to wit: Afterwards, that is to say [*&c. as in the postea, which may be as ante, 92, &c. No. 1, &c. to the statement of the finding of the jury, which may be thus: “As to the issue within joined between the said parties to be tried by the country, say upon their oath that the defendant did promise in manner and form as the plaintiff hath in the said first count of his said declaration within complained against him; and they assess the damages of the plaintiff by reason of the not performing the promise in the said first count mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £—, and for those costs and charges to 40s. And as to the issue within joined between the parties, whereon they have put themselves upon the judgment of the court, the jurors aforesaid, upon their oath aforesaid, say, that if it shall happen that judgment shall be thereupon given for the plaintiff, then they assess the damages of the plaintiff, by him sustained on occasion of the not performing the promise in the second count of the said declaration within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £—, and for his costs and charges last aforesaid, to 40s.”*] But because it is unknown to the court here whether or not the defendant will be convicted of the premises aforesaid, whereof the parties aforesaid have put themselves upon the judgment of the court, therefore let the giving of judgment in this behalf against the defendant be stayed, until the issue aforesaid whereon the said parties have put themselves upon the judgment of the court shall have been adjudged and determined. And hereupon on — come here the parties aforesaid, by their respective attornies; whereupon all and singular the premises aforesaid, whereof the said parties have put themselves upon the judgment of the court, being seen and by the court here fully understood, and mature deliberation being thereupon had, it appears to the court here that the said [*second*] count of the said declaration is sufficient in law. Therefore it is considered that the plaintiff do recover against the defendant his said damages, costs and charges by the jurors aforesaid, in form aforesaid assessed, and also [*&c. conclude the final judgment as usual, according to the nature of the action. See the form, ante, 102, No. 1, &c.*]

(a) See 2 Chit. Ar. Pr. 666. This form will now suffice, though a term intervenes between that in which issue was finally joined and that in which

the issue in fact is determined.

(b) See the form of this award of venire, *ante*, 46, No. 9.

20. *Judgment on Demurrer to one Count of the Declaration in Assumpsit on which Damages are assessed by the Court, and a Nolle prosequi to the other Counts (a).*

[*Proceed as in the demurrer book, as ante, 302, No. 6, setting forth all the pleadings, then proceed thus:*] And hereupon on — come here the parties aforesaid, by their respective attornies aforesaid: Whereupon all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the court here that the said first count of the said declaration is sufficient in law; wherefore the plaintiff ought to recover against the defendant his damages by him sustained on occasion of the not performing of the said promises in the said first count of the said declaration mentioned*. And hereupon the plaintiff says, that he will not further prosecute his suit against the defendant on occasion of the not performing of the said promises in the said second and subsequent counts of the said declaration mentioned: Therefore let the defendant be acquitted as to those last-mentioned promises, and go thereof without day &c. (b) And the plaintiff prays judgment, and his damages by him sustained on occasion of the not performing of the said promise in the said first count mentioned, to be adjudged to him &c. And because it is suggested and proved, and manifestly appears to the court here that the plaintiff hath sustained damages, on occasion of the not performing of the said last-mentioned promise, to the sum of £——, besides his costs and charges by him about his suit in this behalf expended: Therefore it is considered that the plaintiff do recover against the defendant his damages aforesaid, to the said sum of £——, and also £—— for his said costs and charges, by the court here adjudged to the plaintiff and with his assent; which said damages, costs and charges in the whole amount to £——; and the defendants in mercy [*&c. add the usual marginal notes as directed ante, 102, No. 1.*]

21. *Judgment on Demurrer to one Count in a Declaration in Assumpsit, &c. with award of Inquiry thereon, and a Relicta Verificatione by Defendant as to the Plea.*

[*Proceed as in the demurrer book, as ante, 302, No. 6, setting forth all the pleadings, and then proceed thus:*] And hereupon on — come here the parties aforesaid, by their respective attornies aforesaid: Whereupon all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the court here that the said first count in the said declaration is sufficient in law*. And hereupon the defendant, relinquishing his said plea by him above pleaded to the said second and subsequent counts, says, that he cannot deny the action of the plaintiff, nor but that the plaintiff ought to recover against the defendant his damages by reason of the premises: wherefore the plaintiff ought to recover his damages against the defendant. But because it is unknown [*&c. conclude as in the form, post, 328. If the damages are assessed by the court, conclude as post, 343, from the words "and hereupon, &c."*]

(a) See 2 Chit. Ar. Pr. 666.

(b) The defendant is entitled to his costs of this nolle prosequi, and per-

haps the judgment ought to state it. See post.

22. The like in Debt, with a Relicta Verificatione and Remittitur Damna.

[*Proceed as directed in the preceding form, ante, 308, No. 21, to the asterisk*, and then thus:*] And hereupon the defendant, relinquishing his said plea by him above pleaded as to the second and subsequent counts of the said declaration, says that he cannot deny the action of the plaintiff, nor but that the defendant doth owe to the plaintiff the said several sums of money in those counts respectively mentioned and above demanded. And upon this the plaintiff freely here in court remits to the defendant the said last-mentioned sums of money, and all damages sustained by the plaintiff on occasion of the detention thereof; and he prays judgment for the said sum of £——, in the said first count of the said declaration mentioned, together with his damages by him sustained on occasion of the detention thereof, to be adjudged to him &c.: Therefore it is considered that the plaintiff do recover against the defendant the said sum of £—— in the said first count mentioned, and his damages by him sustained on occasion of the detention thereof, to £——, by the court here adjudged to the plaintiff, and with his assent: and the defendant in mercy &c. And let the defendant be acquitted of the said several sums of money and damages so remitted as aforesaid &c.

23. Judgment on Demurrer in Debt on Bond, with Suggestion of Breaches, &c.

[*See the forms, post, 344.*]

24. Execution on a Judgment on Demurrer.

[*Same as in ordinary cases; see forms, ante, 148 to 268.*]

BOOK II.

PART III.

PROCEEDINGS UPON NUL TIEL RECORD PLEADED.

1. *Plea of Judgment recovered in another Court.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

The — day of —, A. D. —.

D. } The defendant, by D. A. his attorney, saith, that the plain-
ats. } tiff heretofore, on the — day of —, A. D. 1840, in the
B. } court of Queen's Bench [*or* "C. P." *or* "Exch. of Pleas'"] at West-

This judgment was signed
the — day of —, A. D.
1840.

The number of the roll is
— (a).

minster, impleaded the said defendant in
an action on promises, to the damage of
the plaintiff of £— for not performing
the very same identical promises in the
said declaration mentioned, and such pro-
ceedings were thereupon had in the said
court in that action that afterwards on
—, the plaintiff, by the consideration

and judgment of the said court, recovered in the said action against the de-
fendant £— for his damages which he had sustained, as well on the
occasion of not performing the same identical promises in the said decla-
ration mentioned, as for his costs and charges by him about his suit in
that behalf expended; whereof the defendant was convicted, as by the
record and proceedings still remaining in the said court at Westminster
more fully appears; which said judgment still remains in full force, not
in the least reversed, satisfied, or made void. And this the defendant is
ready to verify by the said record &c.

[*See 2 Chit. Ar. Pr. 672.*]

2. *Replication of Nul Tiel Record to Plea of Matter of Record of same Court (b).*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

The — day of —, A. D. 1840.

B. } The plaintiff saith*, that there is not any record of the said
v. } supposed recovery [*or* "recognizance," *or* "writ"] in the said plea
D. } mentioned, remaining in the said court of Queen's Bench [*or*
"Common Pleas" *or* "Exchequer of Pleas'"] at Westminster aforesaid,
in manner and form as the defendant hath above in his said plea alleged:

(a) *See 2 Chit. Ar. Pr. 672. See forms, Mansel's Prac. 134.*

(b) *See 2 Chit. Ar. Pr. 669.*

and this the plaintiff is ready to verify, when, where, and in such manner as the court here shall order, direct, and appoint; and because the court here will advise themselves upon the inspection and examination of the said record by the defendant above alleged, a day is given to the parties aforesaid here until —, to hear the judgment of the said court thereupon; for that the said court here are not yet advised thereof.

3. Replication to Plea of Nul Tiel Record of same Court (u).

[*Same as in the preceding form to the asterisk*, and then thus:*] that there is such a record of the said recovery [or "recognizance," or "writ"] remaining in the said court of Queen's Bench [or "C. P." or "Exch. of Pleas"] at Westminster aforesaid, as the plaintiff hath above alleged; and this the plaintiff is ready to verify by the said record, when, where, and in such manner as the court here shall order, direct, and appoint; and he prays that the said record may be seen and inspected† by the said court now here. But because the court here are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid here until —, to hear judgment thereon; for that the said court here are not yet advised thereof &c.

4. Replication of Nul Tiel Record to Plea of Matter of Record of another Court.

[*Same as the form, ante, 310, No. 2, to the asterisk*, and then thus:*] that there is not any record of the supposed recovery [or "recognizance," or "writ"] in the said plea mentioned, remaining in the said court of Queen's Bench [or if the record pleaded is of the court of Common Pleas, say "Common Pleas," or if of the Exch., say "Exch. of Pleas"] at Westminster aforesaid, in manner and form as the defendant hath above in his said plea alleged; and this the plaintiff is ready to verify, when, where, and in such manner† as the court here shall order, direct, and appoint. And hereupon the defendant is commanded that he have the said record here on —, and that he fail not at his peril: the same day is given to the plaintiff at the same place.

5. Replication to Plea of Nul Tiel Record of another Court.

[*Same as the form, supra, No. 3, to the dagger†, and then thus:*] by the said court here. And because the plaintiff hath not the said record now here in court, it is commanded to him that he have the same here on —, and that he fail not at his peril: the same day is given to the defendant at the same place.

6. Demand of Term and Number of the Roll, on Nul Tiel Record of same Court pleaded.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. v. C. D.

I do hereby demand a note in writing of the term, and the number of the roll, whereon the supposed recovery in the plea (*see the pleadings*) in

this cause mentioned, is entered; and in default thereof judgment will be signed as for want of a plea. Dated this — day of —, 1840.

To Mr. D. A.
Defendant's attorney
[or "agent."]

Your's &c. P. A.
Plaintiff's attorney [or "agent."]

[See 2 Chit. Ar. Pr. 669.]

7. *The Issue.*

[The issue is the same in form as in other cases on an issue triable by the country, see ante, 43, No. 1, &c., excepting the conclusion, which, instead of the usual award of venire, will be as in the preceding forms of replications, 310, 311. If there be several issues, some to be tried by the country, and others by the record, then after setting out the pleadings, state an award of the venire, as in the form, ante, 46, No. 8. If there be two or more issues, one to be tried by the record, and another on demurrer, then the forms must be framed accordingly, and see the forms, ante, 46, 47.]

8. *Rule on Defendant to produce the Record in Q. B.*

—, the — day of —, is given to the defendant to produce the record.

[See 2 Chit. Ar. Pr. 669, 670.]

9. *Copy thereof to be served.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

B. } —, the — day of — next, is given to the defendant to
v. } produce the record.
D. }

Entered.

10. *Entry thereof.*

B. } —, the — day of — next, is given to the defendant to
v. } produce the record, otherwise let judgment be entered for the plain-
D. } tiff.
By the Court.

11. *Notice in Q. B. of Plaintiff's Intention to produce a Record of same Court.*

In the Q. B.

Between A. B. plaintiff and C. D. defendant.

Take notice, that the above-named plaintiff will, on —, in the court of Queen's Bench at Westminster, produce to the said court the record of the recovery [or "recognizance," or "writ"] in his declaration [or "replication"] in this cause mentioned. Dated the — day of —, 1840.

To Mr. D. A.
Defendant's attorney
[or "agent."]

Yours &c. P. A.
Plaintiff's attorney [or "agent."]

[See 2 Chit. Ar. Pr. 670.]

12. *Writ of Certiorari from Q. B., where the Record of C. P., or Exchequer is pleaded.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to our right trusty and well-

beloved (*name of chief justice of C. P. or chief baron of Exch. according to the court of which the record is pleaded*), knight, our chief justice of the Bench, [*or if in Exch. say "our chief baron of our Exchequer,"*] at Westminster, greeting: We being willing, for certain causes, to be certified of the proceedings in a plaint which was in our court before you and your companions, our justices of the Bench, [*or if in Exch. say "before you and others the barons of our Exchequer,"*] between *A. B.* and *C. D.* in an action on promises, (*or as the action is,*) and of the judgment thereupon given in our said court, as it is said, command you* that you send to us distinctly and openly, under your seal, a transcript of the proceedings and judgment aforesaid, with all things touching the same, together with this writ, so that we may have them before us at Westminster, on ——. Witness — (*name of chief justice of Q. B.*) at Westminster, the — day of —, in the year of our Lord —.

[*If the record pleaded be of an inferior court, or of a recognizance or writ, alter the certiorari accordingly. See 2 Chit. Ar. Pr. 672.*]

13. The like, in another form.

[*Same as the last to the asterisk*, and then thus:*] that having diligently searched and examined the rolls and records of proceedings and judgments in our said court before our justices [*or in Exch. say "barons"*] aforesaid, of — term, in the — year of our reign, you distinctly and openly certify to us, without delay, under your seal, the tenor of what you shall there find of the record and proceedings in the said plaint, and of the judgment aforesaid, with all things touching the same, as fully and entirely as they now remain in our said court before you, by whatsoever names the parties may be called therein, together with this writ. Witness — (*name of chief justice of Q. B.*) at Westminster, the — day of —, in the year of our Lord —.

14. Writ of Certiorari, from C. P. to an Inferior Court.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to —, greeting: We being willing, for certain causes, to be certified of the tenor of the record and proceedings in a certain plaint, which was in our court before you, between *A. B.* and *C. D.* in an action on promises (*or as the action is,*) and of the judgment thereupon given in our said court, as it is said, command you, that having diligently searched and examined the rolls and other memorandums and records of proceedings and judgments in our said court, you distinctly and openly certify to our justices of the Bench at Westminster, on —, under your seal, the tenor of what you shall there find of the record and proceedings in the said plaint, and of the judgment aforesaid, with all things touching the same, as fully and entirely as they now remain in our said court before you, by whatsoever names the parties may be called therein, together with this writ. Witness — (*name of chief justice of C. P.*) at Westminster, the — day of —, in the year of our Lord —.

[*If the record pleaded be a recognizance or writ, alter the certiorari accordingly.*]

15. *Writ of Certiorari, from Chancery to Q. B.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to our right trusty and well-beloved (*name of chief justice in Q. B.*) our chief justice assigned to hold pleas in our court before us, greeting: We being willing, for certain causes, to be certified of the tenor of the record and proceedings in a certain plaint, which was in our court before us, between *A. B.* and *C. D.* in an action on promises (*or as the action is*), and of the judgment thereupon given in our said court before us, as it is said, command you, that having diligently searched and examined the rolls and records of proceedings and judgments in our said court before us, of ——— term in the ——— year of our reign, you distinctly and openly certify to us, without delay, in our Chancery, under your seal, what you shall there find of the tenor of the record and proceedings in the said plaint, and of the judgment aforesaid, with all things touching the same, as fully and entirely as they now remain in our said court before us at Westminster aforesaid, by whatsoever names the said parties may be called therein, together with this writ. Witness ourself at Westminster, the ——— day of ———, in the year of our Lord ———.

[*If the record pleaded be a recognizance or writ, alter the certiorari accordingly.*]

16. *Mittimus thereon in C. P.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to our right trusty and well-beloved (*name of chief justice in C. P.*) our chief justice of the Bench at Westminster, greeting: We send you inclosed herein, under the seal of our chancellor, the tenor of the record and proceedings in a certain plaint, which was in our court before us, between *A. B.* and *C. D.* in an action on promises (*or as the action is*), and of the judgment thereupon given in our said court before us, at Westminster aforesaid; the tenor of the said record and proceedings, and of the judgment aforesaid, having been certified to us in our Chancery, by our chief justice assigned to hold pleas in our court before us, by virtue of our writ of certiorari to him in that behalf directed. Witness ourself at Westminster, the ——— day of ———, in the year of our Lord ———.

17. *Præcipe for Rule for Judgment in Q. B. or Exch. (a)*

B. } Rule for judgment on an issue of nul tiel record.
v. }
D. } P. A. plaintiff's attorney, [*or "agent."*]
———, 1840.

18. *Rule for Judgment for Plaintiff in C. P., on production of Record by him.*

In the Common Pleas.

On the ——— day of ———, A.D. 1840.

B. } Forasmuch as the plaintiff hath brought into this court the re-
v. } cord of the recovery [*or "recognizance," or "writ"*] in his de-
D. } claration mentioned, it is ordered that judgment upon the issue

(a) See form of the rule, *ante*, 303.

of no such record joined between the said parties, be entered for the plaintiff, unless cause shall be shown to this court to the contrary on or before — next.

By the Court.

[*A like rule for the defendant may be readily framed from this.*]

19. *The like, in Debt, on Non-production of Record pleaded by Defendant.*

B. } Forasmuch as the defendant hath not this day brought into this
v. } court the record of the ["judgment"] in his ["plea"] mentioned;
D. } it is ordered, that judgment upon the issue of no such record joined
between the said parties, be entered for the plaintiff, unless cause [&c.
conclude as in last.]

20. *Judgment for Plaintiff, on Plea of Nul Tiel Record in Debt.*

[*Proceed as directed with respect to the issue, ante, 312, to the end of it, and then thus:*] At which day come here as well the plaintiff as the defendant, by their attornies aforesaid: upon which the record aforesaid being seen and inspected by the court here, it sufficiently appears to the same court, that there is such a record of recovery [or "recognizance," or "writ"] against the defendant, at the suit of the plaintiff, as the plaintiff hath above in that behalf alleged*. Therefore it is considered that the plaintiff do recover against the defendant his said debt and also £—— for his damages which he hath sustained, as well by reason of the detaining of the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff, and with his assent, according to the form of the statute in such case made and provided. And the defendant in mercy &c. [*Insert the usual marginal notes as directed, ante, 102, No. 1.*]

[*If there be several issues, some to be tried by the country, and others by the record, the entry of the judgment in that case is the same, mutatis mutandis, as the forms, ante, 305, 307, in the case of a demurrer, but instead of the words "whereon the said parties have put themselves upon the judgment of the court," say "whereon the said issue is above joined between the said parties to be tried by the record." An entry of continuance is no longer requisite.*]

See 2 Chit. Ar. Pr. 670, 671.

21. *The like, in Assumpsit.*

[*Proceed as directed in the last preceding form, to the asterisk*, and then thus:*] wherefore the plaintiff ought to recover against the defendant his damages by reason of the premises; but because [&c. conclude as post, 328, if the damages are assessed by a writ of inquiry; or as post, 343, if the damages are assessed by the court.]

22. *Judgment for Plaintiff on a Replication of Nul Tiel Record.*

[*Proceed as in the issue, as directed, ante, 312, No. 7, to the end of it, and then thus:*] At which day comes here the plaintiff by his said

attorney; and the defendant, although solemnly demanded in open court to appear and produce the said record by him above in pleading alleged, cometh not, nor produceth the same, but therein wholly fails and makes default; wherefore the plaintiff ought to recover [&c. conclude as directed in the preceding form, if the action be in assumpsit or case, &c.; or if in debt, "Therefore" &c. concluding as in the form, 315, No. 20. Observe the note at the end of that form.]

23. Judgment for Defendant, on Plea of Nul Tiel Record.

[Proceed as in the issue, as directed, ante, 312, No. 7, to the end of it, and then thus:] At which day come here the parties aforesaid, by their attornies aforesaid; and the plaintiff hath not here in court the record of the supposed recovery [or "recognizance," or "writ"] in the said declaration [or "replication"] mentioned, but hath failed and made default in producing the same. Therefore it is considered that the plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c., and that the defendant do go thereof without day &c. And it is further considered [&c. conclude as usual, as ante, 165. Observe the note at the end of the form, ante, 315, No. 20.]

24. Judgment for Defendant, on a Replication of Nul Tiel Record.

Proceed as in the issue, as directed, ante, 312, No. 7, to the end of it, and then thus:] At which day comes here the parties aforesaid, by their attornies aforesaid. Whereupon the record aforesaid being seen and inspected by the court here, it sufficiently appears to the same court, that there is such a record of a recovery against the defendant, at the suit of the plaintiff, as the defendant hath above in that behalf alleged. Therefore it is considered that the plaintiff take nothing by his said writ [&c. conclude as in last form. Observe the note at the end of the form, ante, 315, No. 20.]

25. Execution on a Judgment, upon Nul Tiel Record.

[Same as in ordinary cases. See forms, ante, 148 to 268.]

BOOK II.

PART IV.

PROCEEDINGS UPON JUDGMENT BY CONFESSION OR DEFAULT.

CHAPTER I.

JUDGMENT BY COGNOVIT.

1. *Cognovit in Assumpsit.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

I confess this action, and that the plaintiff hath sustained damages to the amount of £—— (*the damages laid in the declaration*), besides his costs and charges, to be taxed by one of the masters [or, *if already taxed or agreed on, say "to the amount of £——"*]; and in case I shall make default in payment of the sum of £—— (*the real debt*), being the debt in this action, together with the said costs, on the —— day of —— next, the plaintiff shall be a liberty to enter up judgment for the said sum of £—— (*the sum confessed; or, if in debt and the whole debt be confessed, say, "the said debt"*), together with the said costs, and to sue out execution thereon for the said sum of £—— (*the real debt*) and the said costs, and also for the costs of entering up such judgment, and of suing out execution thereon, officers' fees, sheriff's poundage, costs of levying, and all other incidental expenses: And I do hereby undertake not to bring any writ of error, nor file any bill in equity, nor do any other matter or thing to delay the said plaintiff from entering up his judgment or suing out execution thereon, as aforesaid (a); also that it shall not at any time or in any event be necessary, previous to issuing the said execution, to revive the said judgment, or to sue out or execute any writ of scire facias. Dated this —— day of ——, 1840. [C. D.]

Witnessed by me, *W. W.* of No. —, South Square, Gray's Inn, attorney of the court of ——, as the attorney of the said *C. D.*, expressly named by him, and attending at the execution hereof at his request, to inform him of the nature and effect hereof before the same was executed; and I hereby subscribe as and declare myself to be attorney for him,

(a) As to this clause see 2 Chit. Ar. Pr. 675.

having first informed him of the nature and effect of this cognovit previous to his execution thereof (a). [W. W.]

[See 2 Chit. Ar. Pr. 674.]

2. *Cognovit in Debt.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

I confess the debt in this cause [or if part only, "I confess that I owe to the above-mentioned plaintiff £——, parcel of the debt by him in his declaration in this action demanded"], and that the plaintiff hath sustained damages to the amount of one shilling on occasion of the detaining thereof, besides his costs [&c. conclude as in preceding form.]

3. *Cognovit, in Ejectment.*

[See form, post.]

4. *Cognovit, with a Relicta Verificatione.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

I do hereby agree to withdraw the plea [or "demurrer"] by me pleaded in this cause; and do confess this action [or "the debt in this cause," [&c. conclude as in the preceding forms.]

[See 2 Chit. Ar. Pr. 676, 680.]

5. *Cognovit, by Two Defendants in Debt, and where the Debt is payable by Instalments, &c. with a Relicta Verificatione.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. and E. F. defendants.

We confess the debt in this cause amounting to £——, and that the plaintiff has sustained damages to the amount of one shilling on occasion of the detaining thereof, besides his costs and charges in this behalf, amounting to £—— [or, "to be taxed," &c. as in the form, ante, 317.] and judgment may be forthwith entered up for the said debt and costs: and we and each of us hereby agree to pay the said debt and costs by the following instalments, that is to say, the sum of £——, part thereof, on the —— day of —— now next ensuing; the further sum of £——, other part thereof, on the —— day of every succeeding month, until the whole of the said debt and costs be fully paid and satisfied; it being hereby understood and agreed that no execution is to issue on the said judgment until default be made by us, or either of us, in the payment of the said instalments, or any or either of them, on the days and at the times they respectively become due and payable as aforesaid, when the plaintiff shall be at liberty thereupon forthwith to sue out execution for the same, or for the whole of the said debt and costs that remain unpaid, together with the amount of officers' fees, sheriff's poundage, costs of levying, and all other incidental expenses. And we hereby agree to withdraw the plea [or "demurrer"] pleaded [or "put in"] by us in this

(a) This attestation is now necessary since 1 & 2 Vict. c. 110, s. 9, whether the person giving the cogno-

vit be a prisoner or not. See as to its requisites 2 Chit. Ar. Pr. 685.

action, and undertake not to bring any writ of error in this cause, or file any bill in equity, or do any other matter or thing whereby the plaintiff may be delayed in entering up his judgment or suing out execution thereon as aforesaid; also that it shall not at any time or in any event be necessary, previous to issuing the said execution, to revive the said judgment, or to sue out or execute any writ of scire facias. Dated this — day of —, A. D. —.

Witnessed [*&c. see the form, ante, 317, No. 1.*]

C. D.
E. F.

6. Cognovit by Executor admitting assets, &c.

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between T. D., plaintiff, and A. B., executor of the last will and testament of P. B., deceased, defendant.

I confess this action, and that the plaintiff hath sustained damages to the amount of £—, besides his costs and charges as between attorney and client, to be taxed by the master, [and I do also acknowledge, that goods and chattels that were of the said P. B. at the time of his death of the value of the damages and costs aforesaid, and wherewith I am liable to pay, and ought to have paid the same, have come to my hands as executor as aforesaid to be administered, and that I have elogned, wasted, and disposed thereof to mine own use, and in case I shall make default in the payment of the debt and costs agreed on in this action, and interest thereon, in manner following, that is to say [*here set out mode of payment agreed on*], the plaintiff shall be at liberty to enter up judgment for the said debt, interest, and costs, or so much thereof as shall remain due at the time of entering up such judgment, and also for the costs of entering up such judgment and suing out execution thereupon, and shall be at liberty to sue out execution thereon, together with the amount of sheriff's poundage, officers' fees, costs of levy, and all other incidental expenses, [and I undertake that the plaintiff may in every respect hold me as personally liable for the said debt and costs, and enter up and enforce this judgment accordingly]: And I undertake and agree that it shall not be necessary for the plaintiff to issue out any writ or writs of scire facias upon the said judgment, for the purpose of reviving the same, or of suggesting a devastavit, or to bring any action upon that judgment in order to enforce satisfaction thereof, and that I will not file any bill in equity, nor sue out any writ of error, nor do any other act, matter, or thing, whereby the said plaintiff may be delayed from entering up such judgment, and suing out execution upon default made as aforesaid. Dated this — day of —.

A. B.

Witnessed [*&c. see the form, ante, 317, No. 1.*]

7. Confession of Trespasses newly assigned, and Relinquishment of the General Issue to a Declaration, so far as it relates to such Trespasses.

D. } And the defendant, as to the said trespasses above newly assigned,
ats. } freely here in court confesses the said action of the plaintiff, and that
B. } the defendant was and is guilty thereof, and that the plaintiff hath sustained damages in respect thereof to a small amount, to wit, to the sum of 1s., which the defendant is ready and willing to pay to the plaintiff. And the defendant fully relinquishes and abandons so much of his said [first] plea by him above pleaded as traverses or denies, or can be deemed

or construed to traverse or deny the said trespasses above newly assigned, or any part thereof, or that the plaintiff hath sustained damages in respect thereof, &c.

8. *Relicta Verificatione to a Rejoinder and Plea.*

D. } And hereupon the defendant, inasmuch as he cannot deny that
ats. } the said rejoinder to the said replication of the plaintiff to the said
B. } plea of the defendant by him [secondly] above pleaded in bar, and
the matters therein contained, in manner and form as the same are above
stated and set forth, are not sufficient in law, freely here in court relin-
quishes the said rejoinder and the said plea of the defendant by him
[secondly] above pleaded in bar, and wholly abandons all verification
thereof: Therefore let no regard whatever be further had to the said plea
of the defendant by him [secondly] above pleaded in bar, or to the said
rejoinder to the said replication to the said [second] plea.

9. *Judgment by Cognovit, in Assumpsit, in Q. B.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. (*date of the declaration or of
the judgment, if the cognovit were given before declaration*).

— (to wit.) A. B. by P. A. his attorney [&c. proceed to the end of
the declaration, and then on a new line thus:]

And on the — day of —, A. D. — (*day of signing judgment*),
the defendant, by D. A., his attorney, says, that he cannot deny the
action of the plaintiff, nor but that he the defendant did promise, in
manner and form as the plaintiff hath above alleged; nor but that the
plaintiff hath sustained damage, on occasion of the not performing of the
said promises in the said declaration mentioned, to £—, as by the said
declaration is above alleged: And hereupon the plaintiff prays judgment,
and his damages so acknowledged, together with his costs and charges by
him about his suit in this behalf expended, to be adjudged to him, &c.:
Therefore it is considered that the plaintiff do recover against the de-
fendant his damages aforesaid to £— in form aforesaid acknowledged,
and also £— for his said costs and charges by the court here adjudged
to the plaintiff, and with his assent; which said damages, costs, and
charges, in the whole, amount to £—; and the defendant in mercy, &c.

[*In the margin of the roll, opposite the words "Therefore it is con-
sidered," write "Judgment signed the — day of —, 18—; also in
the margin opposite the words, "mercy, &c." at the end write "mercy."*]

10. *The like in Assumpsit, after Issue, with a Relicta Verificatione.*

[*Proceed to the end of the issue and award of venire, as in the form
ante, 43, &c., and then thus:*] At which day come here, as well the
plaintiff as the defendant by their respective attornies aforesaid, and here-
upon the defendant by his said attorney, relinquishing his said plea by
him above pleaded, says that he cannot deny the action of the plaintiff,
nor but that he the defendant did promise [&c. conclude as in the pre-
ceding form, No. 9.]

11. *Judgment by Cognovit in Debt on Bond.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of — A. D. — (the date of the declaration, or of the judgment, if the cognovit was given before declaration).

— to wit. A. B. by P. A. his attorney &c. [proceed to the end of the declaration, and then on a new line thus:]

And on — (day of signing final judgment) the defendant, by D. A. his attorney, says, that he cannot deny the action of the plaintiff, nor but that the said [writing obligatory] is the deed of the defendant, nor but that he owes to the plaintiff the said sum of £— above demanded, in manner and form as the plaintiff hath above alleged. Therefore it is considered that the plaintiff do recover against the defendant his said debt, and also £— for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff, and with his assent: and the defendant in mercy &c.

[In the margin of the roll, opposite the words "Therefore it is considered," write "Judgment signed the — day of —, 18—;" also in the margin, opposite the words "mercy &c." write "mercy."]

12. *Judgment in Debt by Cognovit as to Part, with a Remittitur as to the Residue.*

[Proceed as directed in the last preceding form, to the end of the statement of the declaration, and then on a new line thus:]

And on the — day of —, A. D. — (day of signing judgment) the defendant, by D. A. his attorney, says, that he cannot deny the action of the plaintiff, nor but that he the defendant does owe to the plaintiff the sum of £—, parcel of the said sum above demanded: And upon this the plaintiff freely here in court remits to the defendant the sum of £—, residue of the said sum above demanded, and all damages by him sustained on occasion of the detention of the said sum of £— residue &c., and prays judgment for the said debt of £— parcel &c. so acknowledged as aforesaid, together with his costs and charges by him about his suit in this behalf expended, to be adjudged to him, &c. Therefore it is considered that the plaintiff do recover against the defendant the debt of £—, parcel, &c., in form aforesaid acknowledged, and also £— for his damages which he hath sustained, as well on occasion of the detaining the said debt of £— so acknowledged as aforesaid, as for his said costs and charges by the court here adjudged to the plaintiff, and with his assent: and the defendant in mercy &c. And let the defendant be acquitted of the said sum of £— residue &c., and the damages aforesaid in form aforesaid remitted &c. [Add the marginal notes as directed in the form, supra.]

13. *Judgment by Cognovit in Debt, after Issue, with a Relicta Verificatione.*

[Proceed to the end of the issue, as in the form, ante, 43, &c. and then thus:] At which day come here, as well the plaintiff as the defendant, by their respective attornies aforesaid; and hereupon the defendant, relinquishing his said plea by him above pleaded, saith that he cannot deny the action of the plaintiff, nor but that the said writing obligatory is the deed [&c. conclude as in the form, supra, No. 11.]

14. *Judgments by Cognovit, against an Executor or Administrator.*
 [See the forms, post.]

15. *Docket Paper in Q. B. on a Judgment by Cognovit (a).*
 The entry of P. A. gentleman, one &c., on the — day of —, A. D. 1840.
 — (venue). Judgment by confession, between A. B. plaintiff and C. D. defendant, for £— debt, £— costs, [or in *assumpsit*, &c. "for £— damages and costs." Roll — (its number).

16. *Entry of on Docket Roll, in C. P.*
 On the — day of — A. D. 1840.
 Cognovit actionem [or "confession"] in debt [or "case."]
 — (venue) A. B. plaintiff, } Roll —
 C. D. defendant. } (its number).

17. *Execution on a Judgment by Cognovit.*
 [Same as in ordinary cases. See forms, ante, 148 to 268.]

(a) Docketing judgments under which substitutes registration. See the 4 & 5 W. & M. c. 20, is now the form, ante, 109, and Chit. Ar. Pr. abolished by the 2 & 3 Vict. c. 11, 338.

CHAPTER II.

JUDGMENT UPON A WARRANT OF ATTORNEY.

1. *Warrant of Attorney, to confess Judgment (a).*

To *P. A.* and *D. A.* gentlemen, attornies of her Majesty's Court of Queen's Bench [*or "C. P." or "Exchequer of Pleas"*] at Westminster, jointly or severally, or to any other attorney of the same court.

These are to desire and authorize you, the attornies above-named, or any one of you, or any other attorney of the Court of Queen's Bench [*or "Common Pleas," or "Exch. of Pleas"*] aforesaid, to appear for me *C. D.* [*or in case of several defendants, "for us C. D. and E. F., or either of us"*] (*b*) of —, in the said court, and to receive a declaration for me [*or "us, or either of us"*] in an action of debt for £— for money borrowed [*or if a bond were given, "on a bond or obligation made and entered into by me the said C. D. to A. B. in the penal sum of £—,"*] at the suit of [*the said*] *A. B.*, his executors or administrators (*b*); and thereupon to confess the same action, or else to suffer a judgment by nil dicit or otherwise to pass against me [*or "us, or either of us"*] in the same action, and to be thereupon forthwith entered up against me [*or "us, or either of us"*] of record in the said court, and thereupon that execution may issue for the said sum of—, together with costs of suit [*and all other reasonable and incidental costs and charges attending the said judgment and execution and sale:*] And I [*or "we"*] the said *C. D.* [*and E. F. and each of us*] do hereby further authorize and empower you the said attornies, or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, [*or "for us and in our or either of our names,"*] and as my [*or "our"*] act and deed, to sign, seal, and execute a good and sufficient release or releases in the law to the said *A. B.*, his heirs, executors and administrators, of all and all manner of error and errors, writ and writs of error, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done or suffered, in, about, touching or concerning the aforesaid judgment, or in, about, touching or concerning any writ, warrant, process, declaration, plea, entry, or other proceedings whatsoever, of or in any way concerning the same: And for what you the said attornies, or any one of you, shall

(a) See 2 Chit. Ar. Pr. 682.

(b) Id. 688.

do or cause to be done in the premises, or any of them, this shall be to you, and every of you, a sufficient warrant and authority. In witness whereof I [or "we"] have hereto set my hand and seal [or "our hands and seals"], the — day of —, in the year of our Lord 18—.

Signed, sealed and delivered by C. D., in the presence of, and witnessed by, me, D. A. of —, attorney of the court of —, as the attorney of the said C. D., named by him and attending at the execution hereof, at his request, to inform him of the nature and effect hereof, before the same was executed, and I hereby declare myself to be such attorney for the said C. D., and I subscribe myself as such attorney, having first informed him of the nature and effect of this warrant of attorney, before he executed the same (a).

C. D. (L. 2.)

2. *Defeazance thereon (b).*

Memorandum: The within warrant of attorney is given to secure the payment from the within-named C. D. to the within-named A. B., of the sum of £ — [with interest] on the — day of —, [or if by instalments, then thus: "on the days and in manner following, that is to say, the sum of £ —, part thereof, with interest for the same, on —; the further sum of £ —, other part thereof, with interest for the same, on —; and the further sum of £ —, residue thereof, with interest for the same as aforesaid, on —;" and if a bond were given, add, "according to the condition of a certain bond or obligation made and entered into by the said C. D. to the said A. B., and bearing even date the — day of —, A. D. —" or "with these presents:"] And it is hereby agreed by and between the said parties, that no action, execution, or other process or proceedings shall be commenced, sued out, or prosecuted against the said C. D., his heirs, executors, or administrators, or against his or their lands, goods or chattels, upon the judgment to be entered up in pursuance of the within warrant, until default shall happen to be made in payment of the sum above-mentioned, [or "of some or any one of the instalments above mentioned,"] and interest for the same as aforesaid, [and then only for the amount of the instalment or instalments which shall then be due and unpaid, together with interest for the same, (or if all the instalments are to become due on one default, then say, "and then for the whole of the said sum of £ — (with interest), or such part thereof as shall not have been paid, notwithstanding the periods for the payment of the residue of the said instalments shall not have arrived."]] And it is hereby agreed by and between the said parties, that it shall not, in the event of the said A. B.'s delaying to sue out execution on the said judgment after a year and a day from the signing thereof, or in any other event whatsoever, be necessary for the said A. B., his executors or administrators, to revive the said judgment by scire facias or otherwise, and that execution may issue without it(c); and that no writ of error shall be brought, or bill in equity filed, or any advantage taken or attempted to be taken, by the said C. D., his heirs, executors, or administrators, for or on account of the premises, or any other matter, cause, or thing

(a) This attestation is now necessary, whether the person giving the warrant be a prisoner or not; see 2 Chit. Ar. Pr. 684.

(b) As to the defeazance in general, see 2 Chit. Ar. Pr. 682.

(c) Id. 682.

whatsoever, relating to, touching, or in anywise concerning the issuing or executing of any such execution aforesaid, or any other proceedings which may be had or taken on the said judgment, or to enforce the execution thereof according to the true intent and meaning of these presents. [*If the warrant be for the securing of the payment of an annuity, it is usual to insert the following clause, or one to a similar effect (a):* "And it is hereby agreed, that when and as often as any default shall be made in payment of the said annuity or yearly sum of £——, and the whole or any part of any quarterly payment of the same shall be in arrear and unpaid by the space of twenty-one days, it shall and may be lawful to and for the said *A. B.*, his executors, administrators, or assigns, to sue out execution or executions upon the said judgment against the said *C. D.* for so much and such part of the said annuity or yearly sum of £—— as shall be then due, together with costs, sheriff's poundage, and officers' fees, and all other incidental expenses whatsoever, and that without making or entering any previous suggestion or suing out or executing any writ of scire facias or inquiry under the statute made in the eighth and ninth years of the reign of King William the Third, or any other suggestion, writ of scire facias, or inquiry whatsoever."'] As witness our hands the —— day of ——, A. D. 18—. *C. D.*
A. B.

Witness, *D. A.*

3. *Affidavit to enter up Judgment after a Year (b).*

In the Q. B. [*or "C. P." or "Exch. of Pleas"*](c).

Between *A. B.* plaintiff and *C. D.* defendant.

A. B. of —— tailor, the above-named plaintiff, *D. A.* of ——, gentleman, and *C. C.* of ——, clerk to the said *D. A.*, severally make oath and say: and first this deponent *A. B.* for himself saith, that before the execution of the warrant of attorney hereinafter mentioned, *C. D.* the above-mentioned defendant, was justly and truly indebted unto this deponent in the sum of £—— for (d) goods sold and delivered by this deponent to the said *C. D.* at his request (*state the debt concisely, as in an affidavit to hold to bail*): And that the said *C. D.* being so indebted to this deponent, the said *C. D.* on ——, in the year of our Lord ——, after the said debt had become payable, gave unto this deponent [his certain bond or obligation in the penal sum of ——, conditioned for the payment of the said sum of £——, upon a certain day (*or "at certain times"*) therein particularly mentioned and now elapsed, and also, as a further security for the said debt, the said *C. D.* duly executed unto this deponent] his warrant of attorney aforesaid, bearing date the —— day of ——, A. D. ——, by which the said *C. D.* authorized certain attornies therein mentioned to appear for him in this honourable court, and to receive for him a declaration in debt for £——, at the suit of this deponent, and thereupon to confess the same action, or else to suffer a judgment by nil dicit, or otherwise, to pass against him in the said action, and to be thereupon forthwith entered up against him of record, in this honourable court, for the said sum of £—— besides costs, (*let this agree with the warrant*): And upon which said warrant of attorney was indorsed a certain defeazance, whereby it was agreed that the said sum of £—— should be paid,

(a) See 2 Chit. Ar. Pr. 682.

(b) As to the necessity for this affidavit and its form, &c. see 2 Chit. Ar. Pr. 693. See a form in Mansel's Practice, 124.

(c) As to the title, see 2 Chit. Ar. Pr. 694.

(d) As to the statement of the consideration, see 2 Chit. Ar. Pr. 694.

with interest, on the days and in manner following: that is to say, £—— on [&c. *proceed as in the defeazance*]: and that [judgment should not be entered up in pursuance of the said warrant of attorney until —— term, or “the —— day of ——” then next, and that no execution should be sued out, or other proceedings taken upon the judgment so to be entered up, until &c. *proceed as in the defeazance*]. And this deponent further saith, that the said C. D. hath not paid to this deponent, or to any person for him, or on his behalf, the said sum of £—— [or any part thereof], but that the same, together with interest thereon, making altogether the sum of £——, is still due and owing from the said C. D. unto this deponent. And this other deponent D. A. for himself saith, that he was present on the —— day of ——, A. D. ——, and did then see the said C. D. duly execute the said warrant of attorney, and that the said C. D. did then sign, seal, and as his act and deed deliver the said warrant of attorney in the presence of this deponent, and that the name C. D. at the foot thereof is of the proper hand-writing of the said C. D.; and this deponent further saith, that the name D. A. subscribed to the said warrant of attorney, as the witness thereof, is of the proper hand-writing of this deponent. And this other deponent C. C. for himself saith, that he personally knows the said C. D., and that he verily believes that the said C. D. is now living, this deponent having seen [and conversed with] him alive on ——, [or “having received on —— a letter from him in his own hand-writing, dated the —— day of ——”] (a).

Sworn [&c. *ante*, 207.]

A. B.
D. A.
C. C.

4. *Rule thereupon (b).*

B.) Upon reading the affidavit of A. B., D. A. and C. C., and the
v. { warrant of attorney therein mentioned, it is ordered that the plain-
D. } tiff have leave to enter up judgment against the said defendant
upon the said warrant of attorney. By the Court.

Upon the motion of Mr. ——.

[A judge's order may be readily framed from this form.]

[See 2 Chit. Ar. Pr. 694, 695, 696.]

5. *Judgment on a Warrant of Attorney where a Bond has been given.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

On the —— day of ——, A. D. ——, (*day of signing judgment.*)

Middlesex (*venue*) to wit: A. B., by P. A., his attorney, complains of C. D., who has been summoned to answer the said A. B. in an action of debt, and he demands of him the sum of £—— (*the penalty*) which he owes to and unjustly detains from him*. For that whereas the defendant, on —— (*the date of the bond*), by his certain writing obligatory, sealed with the seal of the defendant, and now shown to the court of our said lady the queen, before the queen herself, [or in C. P. “before the justices of the Bench,” or in Exch. “before the barons of her Exchequer,”] here, the date whereof is the day and year aforesaid, acknowledged himself, his heirs, executors and administrators, to be held and firmly bound

(a) See 2 Chit. Ar. Pr. 693.

(b) As to when the rule is a rule nisi, see 2 Chit. Ar. Pr. 693.

to the plaintiff in the said sum of £——, to be paid to the plaintiff, his executors, administrators or assigns: Yet the defendant hath not as yet paid the said sum above demanded, or any part thereof, to the plaintiff, although often requested so to do; to the damage of the plaintiff of £5, and therefore he brings his suit, &c.

And the defendant, by *P. A.* his attorney, says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant. Therefore it is considered that the plaintiff do recover against the defendant his said debt, and also [80s.] for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff with his assent; and the defendant in mercy &c.

[*Add the usual marginal notes as directed at the end of the form, ante, 102, No. 1.*]

6. *The like, where a Bond has not been given.*

[*Proceed as in the preceding form to the asterisk*, and then thus:*] For that whereas the defendant, on ——, borrowed of the plaintiff the sum above demanded, to be paid to the plaintiff, when he the defendant should be thereunto afterwards requested: Yet the defendant hath not as yet paid [*&c. conclude as in the preceding form.*]

7. *Execution on a Judgment upon a Warrant of Attorney.*

[*Same as in ordinary cases. See forms, ante, 148 to 268.*]

CHAPTER III.

JUDGMENT BY DEFAULT.

1. *Judgment by Nil dicit in Assumpsit, Covenant, Case, or Trespass, where the Action was commenced by writ of Summons, Capias, or Detainer, and the Damages are assessed by a Writ of Inquiry (a).*
In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A.D. —, (date of declaration.)

Middlesex, to wit (the venue): A. B. by P. A. his attorney, complains [&c. copy the declaration to the end, and then proceed on a new line thus:]

And on the — day of —, A.D. — (day of signing interlocutory judgment), (b) the defendant, in his proper person, [or "by D. A. his attorney,"] says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises*. But because it is unknown to the court here what damages the plaintiff hath sustained by means of the premises, the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the plaintiff hath sustained, as well by means of the premises, as for his costs and charges by him about his suit in this behalf expended, and that he send the inquisition which he shall thereupon take to our said lady the queen [or in C. P. "to the justices," or in Exch. "to the barons"] here, on —, under his seal, and the seals of those by whose oath he shall take that inquisition, together with the writ of our said lady the queen to him thereupon directed; the same day is given to the plaintiff, at the same place (c). At which day comes here the plaintiff, by his attorney aforesaid; and the sheriff, to wit, S. S. esquire, sheriff of the said county of —, now here returns a certain inquisition indented, taken before him at —, in the county aforesaid, on —, the — day of —, in the — year of the reign of our said lady the now queen, by the oath of twelve good and lawful men of his bailiwick; by which it is found, that the plaintiff hath sustained damages by means of the premises to £—, over and above his costs and charges by him about his suit in this behalf expended, and for those costs and charges to 40s. Therefore it is considered, that the plaintiff do recover against the defendant his damages, costs, and charges aforesaid, by the said inquisition above found, and also £— for his said costs and charges, by the court here adjudged of increase to the plaintiff, and with his assent; which said damages, costs, and charges in the whole amount to £—; and the defendant in mercy &c.

[Add the usual marginal notes, as directed at the end of the form, ante, 102, No. 1.]

(a) See 2 Chit. Ar. Pr. 700.

(b) See R. H. 4 W. 4, r. 3; 2 Chit.

Ar. Pr. 702.

(c) No continuances are necessary;

see 2 Chit. Ar. Pr. 702.

2. Judgment by Nil dicit, in Debt.

[Proceed as in the preceding form, No. 1, to the end of the declaration, stating the action to be "in an action of debt," and then on a new line thus:]

And on the — day of —, A.D. — (day of signing final judgment), (a) the defendant, in his proper person, [or "by D. A. his attorney,"] says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant*. Therefore it is considered that the plaintiff do recover against the defendant his said debt, and also £— for his damages which he hath sustained, as well on occasion of the detaining of the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff, and with his assent: and the defendant in mercy &c.

[Add the usual marginal notes, as directed at the end of the form, ante, 102, No. 1.]

3. Judgment by Nil dicit, in Detinue, with Award of Inquiry.

[Proceed as in the form, ante, 328, No. 1, to the end of the declaration, stating the action to be "in an action of detinue," and then on a new line, thus]

And on the — day of —, A.D. — (day of signing interlocutory judgment), (a) the defendant, by D. A. his attorney, [or "in his proper person,"] says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant: Wherefore the plaintiff ought to recover against the defendant the [goods and chattels] aforesaid, or the value of the same, if the plaintiff cannot have again the said [goods and chattels], and also the damages by the plaintiff sustained by reason of the detention thereof. But because it is unknown to the court here what is the value of the said goods and chattels, and also what damages the plaintiff hath sustained on occasion of the premises, the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what is the value of the said goods and chattels, and also what damages the plaintiff hath sustained, as well on occasion of the premises, as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which he shall thereupon take to our said lady the queen [or in C. P. "to the justices," or in Exch. "to the barons"] here, on —, under his seal, and the seals of those by whose oath he shall take that inquisition, together with the writ of our said lady the queen to him in that behalf directed; the same day is given to the defendant at the same place &c. At which day [&c. state the return of the inquisition as in the form, ante, 328, No. 1, except that the finding of the jury may be as ante, 93, No. 6, and the form of the judgment will be as ante, 105, No. 10.]

(a) See R. H. 4 W. 4, r. 3; 2 Chit. Ar. Pr. 702.

4. Judgment by Nil dicit, with Award of Inquiry into a County Palatine.

[Proceed as in the form, ante, 328, No. 1, to the end of the declaration, and then, on a new line, thus:]

And on the — day of —, A.D. — (day of signing interlocutory judgment), the defendant in his proper person says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises. But because it is unknown to the court here what damages the plaintiff hath sustained by means of the premises aforesaid; it is commanded to the chancellor of the said county palatine of Lancaster [or "Durham"] (a), that by the writ of our said lady the queen, under the seal of the said county palatine, to be duly made and directed to the sheriff of the said county palatine, he command the said sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the plaintiff hath sustained, as well by means of the premises, as for his costs and charges in and about his suit in this behalf expended; and that the sheriff, when he shall thereupon take, he make known to the said chancellor under his seal and the seals of those by whose oath he shall take the inquisition, together with the names of the persons by whose oath he shall take the same, so that the said chancellor may certify under the seal of the said county palatine the queen [or in C. P. "to the justices," or in C. P. "to the justices"] here, on —, together with the name of the said sheriff, and the writ of our said lady the queen to the said chancellor in the said county palatine the same day is given to the plaintiff at the same place as where the writ is made here the plaintiff, by his said attorney; and the said chancellor here certifies a certain inquisition indented, in the said county palatine at —, in the said county, on the — day of —, in the — year of our Lord, by the oath of twelve good and lawful men of the said sheriff's bailiwick: by which it is found [&c. conclude as ante, 328, No. 1.]

5. Judgment by Nil dicit, in Trespass on a new Assignment, where there are no Damages on which Issue has been taken.

Proceed as directed in the form, ante, 328, No. 1, to the end of the declaration, and then, on a new line, thus:

And on the — day of —, A.D. 1840. (day of signing interlocutory judgment), the defendant says nothing in bar or preclusion of the said action of the plaintiff as to the said trespass above newly assigned, whereby the plaintiff remains therein undefended against the defendant; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises: But because it is unknown to the court here what damages the plaintiff hath sustained on occasion of the said trespass above newly assigned, the sheriff is commanded [&c. conclude as ante, 328, No. 1.]

6. Judgment by Nil dicit as to one Count, and Nolle prosequi to two others, after Plea in Debt on a statute.

Proceed as directed in the form, ante, 328, No. 1, to the end of the plea and return: And as to the trespass and offence in the [last] count

(a) See as to Durham, ante, 21, note
(c) and 1 & 2 Vict. c. 110, s. 2.

(d) See R. H. 4 Will. 4, r. 3;
2 Ch. Ar. Pl. 702.

of the said declaration mentioned, the defendant says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant: And hereupon, on the — day of —, A. D. 1840 (*day of signing final judgment*), (a) the plaintiff freely here in court says, that he will not further prosecute his suit against the defendant for the said trespasses and offences in the said [first and second] counts of the said declaration mentioned; and he prays judgment for the said sum of £—— in the said [last] count of the said declaration mentioned, parcel of the said sum of £—— above demanded, together with his costs and charges by him laid out about his suit in this behalf: Therefore it is considered that the plaintiff do recover against the defendant the said sum of £—— in the said [last] count of the said declaration mentioned, parcel &c., and also £—— for his said costs and charges by the court here adjudged to the plaintiff, and with his assent, according to the form of the statute in such case made and provided; and the defendant in mercy &c. And let the defendant be acquitted of the said offences in the said [first and second] counts of the said declaration mentioned, and go thereof without day &c. And it is also considered by the court here that the defendant do recover against the plaintiff £—— for his reasonable costs and charges by him about his defence in this behalf laid out and expended by the court here adjudged to the defendant, with his assent, according to the form of the statute in such case made and provided (b); and that the defendant have execution thereof &c. [*Add the usual marginal notes as directed at the end of the form, ante, 102, No. 1.*]

7. Judgment by Nil dicit, with a Remittitur of Part of the Damages, at the Return of the Inquiry.

[*Proceed as in the form, ante, 328, No. 1, to the end of the sheriff's return on the writ of inquiry, and then thus:*] And hereupon, on the — day of —, A. D. 1840, the plaintiff freely here in court remits to the defendant the sum of £——, parcel of the damages, costs, and charges aforesaid, by the said inquisition in form aforesaid found; and prays judgment for the residue of those damages, costs, and charges, together with his costs and charges by him about his suit in this behalf expended: Therefore it is considered that the plaintiff do recover against the defendant the sum of £——, residue of the damages, costs, and charges aforesaid, by the said inquisition above found, and also £—— for his further costs and charges aforesaid, by the court here adjudged of increase to the plaintiff and with his assent; which said residue of the damages, costs, and charges, by the said inquisition above found, together with the said further costs and charges so adjudged of increase, amount in the whole to £——, and the defendant in mercy &c. And let the defendant be acquitted of the said sum of £——, parcel &c. so remitted by the plaintiff as aforesaid, and go thereof without day &c. [*Add the usual marginal notes as directed at the end of the form, ante, 102, No. 1.*]

(a) See R. H. 4 Will. 4, r. 3; 2 Chit. Ar. Pr. 702.

(b) 3 & 4 Will. 4, c. 42, s. 33.

8. Judgment in Assumpsit where there is Judgment by Default as to one Count and Issue in Fact as to the Residue, which is found for Plaintiff (a).

[Proceed as in the form, ante, 328, No. 1, to the end of the issue, and then on a new line, thus:]

And on the — day of —, A.D. 1840 (*day of signing interlocutory judgment*), as to the said [first] count of the said declaration, the defendant says nothing in bar or preclusion of the said action of the plaintiff, with respect to the said [first] count, whereby the plaintiff remains therein undefended against the defendant in respect thereof; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises in the said [first] count mentioned. But because it is unknown to the court here what damages the plaintiff hath sustained on occasion thereof; and because it is convenient and necessary that there be but one taxation of the damages in this suit: Therefore let the giving of judgment in this behalf against the defendant be stayed, until the trial of the said issue above joined between the said parties. And thereupon as well to try the said last-mentioned issue, as to inquire of and assess the damages which the plaintiff hath sustained by reason of the [not performing of the said promise] in the said [first] count of the said declaration mentioned, the sheriff is commanded, [*&c. proceed as in the award of the venire, as ante, 43, No. 1, then proceed in the entry as directed, ante, 92, to these words in the postea*], being chosen, tried, and sworn, as to the said issue within joined between the parties, say upon their oath that the defendant did promise in manner and form as the plaintiff hath within in that behalf complained against him: And they assess the damages of the plaintiff, as well by reason of the not performing the said several promises in the said [second and subsequent] counts of the said declaration within-mentioned, as by reason of the not performing the said promise in the said [first] count of the said declaration within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to 40s. Therefore, [*&c. then conclude stating the judgment as usual. See ante, 102, &c.*]

9. Judgment in assumpsit, where one Defendant suffers Judgment by Default and the other pleads to Issue, and the Issue is found for Plaintiff (b).

[Proceed as in the form, ante, 328, No. 1, to the end of the issue, and then, on a new line, thus:]

And the said E. F. in his proper person says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the said E. F.: Wherefore, on the — day of —, A.D. 1840 (*day of signing interlocutory judgment*), the plaintiff ought to recover against the said E. F. his damages on occasion of the premises. But because it is unknown to the court here what damages the plaintiff hath sustained on occasion thereof, and because it is convenient and necessary that there be but one taxation of the damages in this suit, therefore let the giving of judgment in this behalf against the said E. F. be stayed, until the trial of the said issue above joined between the

(a) See form of award of venire in such a case, ante, 45, No. 5.

(b) See a form of award of venire in such a case, ante, 44, No. 4.

plaintiff and the said C. D., and thereupon as well to try the said issue so joined, as to inquire of and assess the damages which the plaintiff hath sustained by reason of the [not performing the] above promises by the said C. D. the sheriff is commanded [&c. proceed as in the award of the venire, as ante, 44, then continue the entry as directed, ante, 92, to these words in the postea], being chosen, tried, and sworn*, say upon their oath that the said C. D. did promise in manner and form as the plaintiff hath within complained against him; and they assess the damages of the plaintiff by reason of the not performing the promises within mentioned, as well against the said C. D. as against the said E. F., over and above his costs and charges by him about his suit in this behalf expended, to £—, and for those costs and charges to 40s. Therefore [&c. conclude, stating the judgment as in ordinary cases. See ante, 102.]

10. Judgment in an Action ex delicto, where one Defendant suffers Judgment by Default, and the other pleads to Issue, and the Issue is found for him (a).

[Proceed as directed in the preceding form, mutatis mutandis, to the asterisk*, and then thus:] say upon their oath that the said C. D. is not guilty of the several grievances [or "trespasses"] within laid to his charge in manner and form as the plaintiff hath within complained against him: and they assess the damages of the plaintiff against E. F., by reason of the premises within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £—, and for those costs and charges to 40s. Therefore [&c. conclude, stating the judgment as in the form, ante, 107, Nos. 19, 20.]

11. The like, in Action ex contractu (b).

[Proceed as directed in the form, ante, 332, No. 9, to the asterisk*, and then thus:] say upon their oath that the said C. D. did not promise in the manner and form as the plaintiff hath within complained against him. Whereupon the said jurors are discharged from inquiring against the said E. F. what damages the plaintiff hath sustained by reason of the premises within mentioned. Therefore it is considered that the plaintiff take nothing by his said writ, but that he be in mercy &c.; and that the said E. F. do go thereof without day, &c. And it is further considered by the court here that the said C. D. do recover [&c. conclude, stating the judgment for the defendant, who succeeded on the issue, as ante, 108, No. 23.]

12. Judgment by Non sum informatus, in Assumpsit (c).

[Proceed as directed, ante, 328, to the end of the declaration, and then, on a new line, thus:]

And on the — day of —, A. D. 1840 (day of signing interlocutory judgment), the defendant, by D. A. his attorney, comes, and the plaintiff prays that the defendant may answer his said declaration; whereupon the said attorney of the defendant says, that he is not informed by the de-

(a) See form of award of venire, ante, 46, No. 7. see a form of award of venire, ante, 45, No. 5.

(b) See 2 Chit. Ar. Pr. 701; and (c) See 2 Chit. Ar. Pr. 700.

fendant of any answer to be given for him to the plaintiff in the premises, nor doth he say any thing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant †; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises: But because it is unknown [&c. *proceed, stating the writ of inquiry, as in judgment by nil dicit, as ante, 328.*]

13. *The like, in Debt.*

[*Proceed as in the preceding form to the dagger†, and then thus:*] Therefore it is considered that the plaintiff do recover against the defendant his said debt [&c. *conclude as in the form in debt, ante, 329, No. 2.*]

14. *Docket Papers, in Q. B. (a).*

The entry [or "further entry"] of P. A. gentleman, one &c. on the ____ day of ____, A.D. 1840.

(*Venue.*) Judgment by nil dicit between A. B. plaintiff and C. D. defendant, for £____ debt } *Roll* ____
[or as the plea is,] —s. damages. } (*its number.*)

(*Venue.*) Judgment by default in case (or as the plea is) between A. B. plaintiff and C. D. defendant, for £____ damages and costs. } *Roll* 1877.

15. *Entries on Docket Roll, in C. P. (a).*

Nil dicit [or "says nothing"] in case [or "debt," or as the plea is]
(*Venue.*) A. B. plaintiff, } *Roll*
C. D. defendant. } 3845.

Non sum informatus [or "not informed"] in case [or debt," or as the plea is.]
(*Venue.*) A. B. plaintiff, } *Roll*
C. D. defendant. } 3847.

(a) Docketing under 4 & 5 W. & M. c. 20, is now abolished, and registration is substituted for it by 2 & 3 Vict. c. 11, s. 1. See 1 Chit. Ar. Pr. 338.

CHAPTER IV.

WRIT OF INQUIRY, &c.

SECT. I.—*Writ of Inquiry in Ordinary Cases, 335 to 341.*

II.—*Reference to the Master, 342 to 344.*

III.—*Writ of Inquiry in Debt on Bond, 344 to 356.*

SECTION I.

WRIT OF INQUIRY IN ORDINARY CASES.

1. *Writ of Inquiry.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting : Whereas *A. B.* lately in our court before us [*or in C. P.* “before our justices,” *or in Exch.* “before the barons of our Exchequer”] at Westminster, by *P. A.* his attorney, [*or if in person say, “in his own proper person,”*] complained of *C. D.* who was summoned [*as in the commencement of the declaration*], to answer the said *A. B.* in an action on promises (*or as the form of action is*): For that whereas [*&c. here recite the declaration*], to the damage of the said *A. B.* of £—, as he said, and therefore he brought suit, &c.* And such proceedings were thereupon had in our said court at Westminster aforesaid, that the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises : But because it is unknown to our said court what damages the said *A. B.* hath sustained by means of the premises aforesaid ; therefore we command you, that by the oath of twelve good and lawful men of your bailiwick you diligently inquire what damages the said *A. B.* hath sustained, as well by means of the premises aforesaid, as for his costs and charges by him about his suit in this behalf expended, and that you send to us [*or in C. P.* “to our justices,” *or in Exch.* “to the barons of our Exchequer”] at Westminster, on — (a), the inquisition which you shall thereupon take, under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness — (*name of chief justice, or in Exch. of chief baron*), at Westminster, the — day of —, in the — year of our reign (b).

[See 2 Chit. Ar. Pr. 708, 709.]

(a) As to the return, see 2 Chit. Ar. Pr. 707.

(b) As to the teste, see 2 Chit. Ar. Pr. 707.

2. The like, into a County Palatine.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to our chancellor of our county palatine of Lancaster [or "Durham (a)"], or his deputy there, greeting: Whereas *A. B.* lately in our court [*&c. as in the preceding form to the asterisk*.*] And such proceedings were thereupon had in our said court at Westminster aforesaid, that the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises: But because it is unknown to our said court what damages the said *A. B.* hath sustained by means of the premises aforesaid; therefore we command you, that by our writ, under the seal of our said county palatine, to be duly made and directed to the sheriff of the same county, you command the said sheriff, that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what damages the said *A. B.* hath sustained, as well by means of the premises aforesaid, as for his costs and charges by him about his suit in this behalf expended; and that you send to us [or in *C. P.* "to our justices," or in *Exch.* "to the barons of our Exchequer"] at Westminster, on —, the inquisition which the said sheriff shall thereupon take, under his seal, and the seals of those by whose oath he shall take that inquisition, together with this writ. Witness — (*name of chief justice, or in Exchequer of chief baron*), at Westminster, the — day of —, in the — year of our reign.

3. Writ of Inquiry in Trespass, after Plea of Not Guilty, and a Nolle Prosequi as to Part, and Judgment by Nil Dicit for the Residue of the Trespasses.

[*As in the form, ante, 335, to the end of the recital of the declaration, and then as follows:*] And the said *C. D.*, by *D. A.* his attorney, as to all the said several supposed trespasses in the said declaration mentioned, except the assaulting and beating [*&c.*] said that he was not guilty thereof, in manner and form as the said *A. B.* had above thereof complained against him: and of this the said *C. D.* put himself upon the country &c. And as to the said assaulting and beating [*&c.*] the said *C. D.* said nothing in bar or preclusion of the action of the said *A. B.* in respect of the said last-mentioned trespasses, whereby the said *A. B.* remained therein undefended against the said *C. D.*: And thereupon the said *A. B.* freely in court said, that he would not further prosecute his suit against the said *C. D.* for the residue of the trespasses in the said declaration mentioned; and he prayed judgment, and his damages by him sustained on occasion of the said assaulting and beating [*&c.*] to be adjudged to him: And such proceedings were thereupon had in our said court, that the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the trespasses last aforesaid: But because it is unknown to our said court what damages the said *A. B.* hath sustained on occasion of the trespasses last aforesaid: therefore we command you &c. [*as ante, 335, except instead of saying "premises last aforesaid," say "trespasses last aforesaid"*], and the inquisition which you shall thereupon take &c. [*conclude as in the form, ante, 335.*]

(a) See as to Durham, *ante*, 21, n. (b); and 1 & 2 Vict. c. 110, s. 3.

4. Rule Nisi to have the Inquiry executed before the Chief Justice or a Judge at the Assizes.

On the — day of —, A.D. —.

B. } Upon reading the affidavit of the plaintiff, it is ordered that the
v. } defendant, upon notice of this rule to be given to him [*or where*
D. } *he has appeared by attorney*, “to his attorney or agent”], shall
upon — next show cause why the writ of inquiry of damages in this
cause should not be executed before the sheriff of —, at the next assizes
to be holden for that county, in the presence of one of her majesty’s
justices to be assigned to take the assizes in and for the said county [*or in*
a town cause, “at the sittings of nisi prius to be holden for Middlesex (*or*
‘London’) after this present term, in the presence of the lord chief justice
or one other of the justices of this court”] (*a*). On the motion of
Mr. —. By the Court.

[See 2 Chit. Ar. Pr. 713.]

5. Affidavit of Service of Rule.

In the Q. B. [*or “C. P.” or “Exch. of Pleas.”*]

A. B. plaintiff and C. D. defendant.

C. C. clerk to P. A. of —, gentleman, maketh oath and saith, that
this deponent did, about — of the clock of the day of the date thereof,
leave a true copy of the rule hereunto annexed at the office of Mr. A. A.,
who acts as attorney [*or “agent”*] for the above-named defendant, with
the clerk of the said Mr. A. A. at —; and did also at the same time
leave therewith an examined copy of the affidavit made by the above
plaintiff, on his obtaining the said rule. Dated the — day of —,
1840.

Sworn [*&c. as ante*, 207.]

C. C.

6. Judge’s Fiat for it in Vacation.

B. } Upon reading the affidavit of the plaintiff, and upon hearing the
v. } attorneys [*or “agents”*] on both sides, I do order that the masters
D. } do draw up a rule that the writ of inquiry in this cause be executed
[*&c. as in the form, supra*, No. 4.]

[See 2 Chit. Ar. Pr. 714.]

7. Judge’s Order for a good Jury.

B. } Upon hearing the attorneys [*or “agents”*] on both sides, I do
v. } order that the writ of inquiry in this cause be executed by a good
D. } jury to be impanelled, returned, and sworn by the sheriff of —.
Dated the — day of —, 1840.

(*Judge’s signature.*)

[See 2 Chit. Ar. Pr. 714.]

(*a*) The rule also here ordered was usually that the cause should be tried “by a good jury to be impanelled, returned, and sworn by the said sheriff;” but by R. H. 2 Will. 4, r. 101,

it seems that a rule can be no longer drawn up for that purpose, but there shall be only a judge’s order; see 2 Chit. Ar. Pr. 714, and the form of the order, *supra*.

with interest, on the days and in manner following: that is to say, £—— on [&c. *proceed as in the defeazance*]: and that [judgment should not be entered up in pursuance of the said warrant of attorney until —— term, or “the —— day of ——” then next, and that no execution should be sued out, or other proceedings taken upon the judgment so to be entered up, until &c. *proceed as in the defeazance*]. And this deponent further saith, that the said *C. D.* hath not paid to this deponent, or to any person for him, or on his behalf, the said sum of £—— [or any part thereof], but that the same, together with interest thereon, making altogether the sum of £——, is still due and owing from the said *C. D.* unto this deponent. And this other deponent *D. A.* for himself saith, that he was present on the —— day of ——, A. D. ——, and did then see the said *C. D.* duly execute the said warrant of attorney, and that the said *C. D.* did then sign, seal, and as his act and deed deliver the said warrant of attorney in the presence of this deponent, and that the name *C. D.* at the foot thereof is of the proper hand-writing of the said *C. D.*; and this deponent further saith, that the name *D. A.* subscribed to the said warrant of attorney, as the witness thereof, is of the proper hand-writing of this deponent. And this other deponent *C. C.* for himself saith, that he personally knows the said *C. D.*, and that he verily believes that the said *C. D.* is now living, this deponent having seen [and conversed with] him alive on ——, [or “having received on —— a letter from him in his own hand-writing, dated the —— day of ——”] (a).

Sworn [&c. *ante*, 207.]

A. B.
D. A.
C. C.

4. *Rule thereupon (b).*

B.) Upon reading the affidavit of *A. B.*, *D. A.* and *C. C.*, and the
v. { warrant of attorney therein mentioned, it is ordered that the plain-
D.) tiff have leave to enter up judgment against the said defendant
upon the said warrant of attorney. By the Court.

Upon the motion of Mr. ——.

[*A judge's order may be readily framed from this form.*]

[*See 2 Chit. Ar. Pr. 694, 695, 696.*]

5. *Judgment on a Warrant of Attorney where a Bond has been given.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

On the —— day of ——, A. D. ——, (*day of signing judgment.*)

Middlesex (*venue*) to wit: *A. B.*, by *P. A.*, his attorney, complains of *C. D.*, who has been summoned to answer the said *A. B.* in an action of debt, and he demands of him the sum of £—— (*the penalty*) which he owes to and unjustly detains from him*. For that whereas the defendant, on —— (*the date of the bond*), by his certain writing obligatory, sealed with the seal of the defendant, and now shown to the court of our said lady the queen, before the queen herself, [or in C. P. “before the justices of the Bench,” or in *Erch.* “before the barons of her Exchequer,”] here, the date whereof is the day and year aforesaid, acknowledged himself, his heirs, executors and administrators, to be held and firmly bound

(a) See 2 Chit. Ar. Pr. 693.

(b) As to when the rule is a rule nisi, see 2 Chit. Ar. Pr. 693.

to the plaintiff in the said sum of £——, to be paid to the plaintiff, his executors, administrators or assigns: Yet the defendant hath not as yet paid the said sum above demanded, or any part thereof, to the plaintiff, although often requested so to do; to the damage of the plaintiff of £5, and therefore he brings his suit, &c.

And the defendant, by *P. A.* his attorney, says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant. Therefore it is considered that the plaintiff do recover against the defendant his said debt, and also [80s.] for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff with his assent; and the defendant in mercy &c.

[Add the usual marginal notes as directed at the end of the form, ante, 102, No. 1.]

6. *The like, where a Bond has not been given.*

[Proceed as in the preceding form to the asterisk*, and then thus:] For that whereas the defendant, on ——, borrowed of the plaintiff the sum above demanded, to be paid to the plaintiff, when he the defendant should be thereunto afterwards requested: Yet the defendant hath not as yet paid [&c. conclude as in the preceding form.]

7. *Execution on a Judgment upon a Warrant of Attorney.*

[Same as in ordinary cases. See forms, ante, 148 to 268.]

CHAPTER III.

JUDGMENT BY DEFAULT.

1. *Judgment by Nil dicit in Assumpsit, Covenant, Case, or Trespass, where the Action was commenced by writ of Summons, Capias, or Detainer, and the Damages are assessed by a Writ of Inquiry (a).*
In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A.D. —, (date of declaration.)

Middlesex, to wit (the venue): A. B. by P. A. his attorney, complains [&c. copy the declaration to the end, and then proceed on a new line thus:]

And on the — day of —, A.D. — (day of signing interlocutory judgment), (b) the defendant, in his proper person, [or "by D. A. his attorney,"] says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises*. But because it is unknown to the court here what damages the plaintiff hath sustained by means of the premises, the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the plaintiff hath sustained, as well by means of the premises, as for his costs and charges by him about his suit in this behalf expended, and that he send the inquisition which he shall thereupon take to our said lady the queen [or in C. P. "to the justices," or in Exch. "to the barons"] here, on —, under his seal, and the seals of those by whose oath he shall take that inquisition, together with the writ of our said lady the queen to him thereupon directed; the same day is given to the plaintiff, at the same place (c). At which day comes here the plaintiff, by his attorney aforesaid; and the sheriff, to wit, S. S. esquire, sheriff of the said county of —, now here returns a certain inquisition indented, taken before him at —, in the county aforesaid, on —, the — day of —, in the — year of the reign of our said lady the now queen, by the oath of twelve good and lawful men of his bailiwick; by which it is found, that the plaintiff hath sustained damages by means of the premises to £—, over and above his costs and charges by him about his suit in this behalf expended, and for those costs and charges to 40s. Therefore it is considered, that the plaintiff do recover against the defendant his damages, costs, and charges aforesaid, by the said inquisition above found, and also £— for his said costs and charges, by the court here adjudged of increase to the plaintiff, and with his assent; which said damages, costs, and charges in the whole amount to £—; and the defendant in mercy &c.

[Add the usual marginal notes, as directed at the end of the form, ante, 102, No. 1.]

(a) See 2 Chit. Ar. Pr. 700.

(b) See R. H. 4 W. 4, r. 3; 2 Chit. Ar. Pr. 702.

(c) No continuances are necessary; see 2 Chit. Ar. Pr. 702.

2. Judgment by Nil dicit, in Debt.

[Proceed as in the preceding form, No. 1, to the end of the declaration, stating the action to be "in an action of debt," and then on a new line thus:]

And on the — day of —, A.D. — (day of signing final judgment), (a) the defendant, in his proper person, [or "by D. A. his attorney,"] says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant*. Therefore it is considered that the plaintiff do recover against the defendant his said debt, and also £— for his damages which he hath sustained, as well on occasion of the detaining of the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff, and with his assent: and the defendant in mercy &c.

[Add the usual marginal notes, as directed at the end of the form, ante, 102, No. 1.]

3. Judgment by Nil dicit, in Detinue, with Award of Inquiry.

[Proceed as in the form, ante, 328, No. 1, to the end of the declaration, stating the action to be "in an action of detinue," and then on a new line, thus]

And on the — day of —, A.D. — (day of signing interlocutory judgment), (a) the defendant, by D. A. his attorney, [or "in his proper person,"] says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant: Wherefore the plaintiff ought to recover against the defendant the [goods and chattels] aforesaid, or the value of the same, if the plaintiff cannot have again the said [goods and chattels], and also the damages by the plaintiff sustained by reason of the detention thereof. But because it is unknown to the court here what is the value of the said goods and chattels, and also what damages the plaintiff hath sustained on occasion of the premises, the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what is the value of the said goods and chattels, and also what damages the plaintiff hath sustained, as well on occasion of the premises, as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which he shall thereupon take to our said lady the queen [or in C. P. "to the justices," or in Exch. "to the barons"] here, on —, under his seal, and the seals of those by whose oath he shall take that inquisition, together with the writ of our said lady the queen to him in that behalf directed; the same day is given to the defendant at the same place &c. At which day [&c. state the return of the inquisition as in the form, ante, 328, No. 1, except that the finding of the jury may be as ante, 93, No. 6, and the form of the judgment will be as ante, 105, No. 10.]

(a) See R. H. 4 W. 4, r. 3; 2 Chit. Ar. Pr. 702.

4. *Judgment by Nil dicit, with Award of Inquiry into a County Palat ne.*

[*Proceed as in the form, ante, 328, No. 1, to the end of the declaration, and then, on a new line, thus:*]

And on the — day of —, A. D. — (day of signing interlocutory judgment), the defendant in his proper person says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises. But because it is unknown to the court here what damages the plaintiff hath sustained by means of the premises aforesaid; it is commanded to the chancellor of the said county palatine of Lancaster [or "Durham"] (a), that by the writ of our said lady the queen, under the seal of the said county palatine, to be duly made and directed to the sheriff of the said county palatine, he command the said sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the plaintiff hath sustained, as well by means of the premises, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which the said sheriff shall thereupon take, he make known to the said chancellor, under his seal and the seals of those by whose oath he shall take that inquisition, together with the names of the persons by whose oath he shall take the same, so that the said chancellor may certify the same to our said lady the queen [or in C. P. "to the justices," or in *Erch.* "to the barons"] here, on —, together with the name of the said sheriff, and the writ of our said lady the queen to the said chancellor in that behalf directed; the same day is given to the plaintiff at the same place: At which day comes here the plaintiff, by his said attorney; and the said chancellor now here certifies a certain inquisition indented, taken before the said sheriff at —, in the said county, on the — day of —, in the — year of our Lord, by the oath of twelve good and lawful men of the said sheriff's bailiwick; by which it is found [&c. conclude as ante, 328, No. 1.]

5. *Judgment by Nil dicit, in Trespass on a new Assignment, where there are no Pleadings on which Issue has been taken.*

[*Proceed as directed in the form, ante, 328, No. 1, to the end of the new assignment, and then, on a new line, thus:*]

And on the — day of —, A. D. 1840, (day of signing interlocutory judgment), (b) the defendant says nothing in bar or preclusion of the said action of the plaintiff as to the said trespass above newly assigned, whereby the plaintiff remains therein undefended against the defendant; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises: But because it is unknown to the court here what damages the plaintiff hath sustained on occasion of the said trespass above newly assigned, the sheriff is commanded [&c. conclude as ante, 328.]

6. *Judgment by Nil dicit as to one Count, and Nolle prosequi to two others, after Plea in Debt on a statute.*

[*Proceed as directed in the form, ante, 328, No. 1, to the end of the plea, and then thus:*] And as to the trespass and offence in the [last] count

(a) See as to Durham, ante, 21, note (b); and 1 & 2 Vict. c. 110, s. 3.

(b) See R. H. 4 Will. 4, r. 3; 2 Chit. Ar. Pr. 702.

of the said declaration mentioned, the defendant says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant: And hereupon, on the — day of —, A. D. 1840 (*day of signing final judgment*), (a) the plaintiff freely here in court says, that he will not further prosecute his suit against the defendant for the said trespasses and offences in the said [first and second] counts of the said declaration mentioned; and he prays judgment for the said sum of £—— in the said [last] count of the said declaration mentioned, parcel of the said sum of £—— above demanded, together with his costs and charges by him laid out about his suit in this behalf: Therefore it is considered that the plaintiff do recover against the defendant the said sum of £—— in the said [last] count of the said declaration mentioned, parcel &c., and also £—— for his said costs and charges by the court here adjudged to the plaintiff, and with his assent, according to the form of the statute in such case made and provided; and the defendant in mercy &c. And let the defendant be acquitted of the said offences in the said [first and second] counts of the said declaration mentioned, and go thereof without day &c. And it is also considered by the court here that the defendant do recover against the plaintiff £—— for his reasonable costs and charges by him about his defence in this behalf laid out and expended by the court here adjudged to the defendant, with his assent, according to the form of the statute in such case made and provided (b); and that the defendant have execution thereof &c. [*Add the usual marginal notes as directed at the end of the form, ante, 102, No. 1.*]

7. Judgment by Nil dicit, with a Remittitur of Part of the Damages, at the Return of the Inquiry.

[*Proceed as in the form, ante, 328, No. 1, to the end of the sheriff's return on the writ of inquiry, and then thus:*] And hereupon, on the — day of —, A. D. 1840, the plaintiff freely here in court remits to the defendant the sum of £——, parcel of the damages, costs, and charges aforesaid, by the said inquisition in form aforesaid found; and prays judgment for the residue of those damages, costs, and charges, together with his costs and charges by him about his suit in this behalf expended: Therefore it is considered that the plaintiff do recover against the defendant the sum of £——, residue of the damages, costs, and charges aforesaid, by the said inquisition above found, and also £—— for his further costs and charges aforesaid, by the court here adjudged of increase to the plaintiff and with his assent; which said residue of the damages, costs, and charges, by the said inquisition above found, together with the said further costs and charges so adjudged of increase, amount in the whole to £——, and the defendant in mercy &c. And let the defendant be acquitted of the said sum of £——, parcel &c. so remitted by the plaintiff as aforesaid, and go thereof without day &c. [*Add the usual marginal notes as directed at the end of the form, ante, 102, No. 1.*]

(a) See R. H. 4 Will. 4, r. 3; 2 Chit. Ar. Pr. 702.

(b) 3 & 4 Will. 4, c. 42, s. 33.

8. Judgment in Assumpsit where there is Judgment by Default as to one Count and Issue in Fact as to the Residue, which is found for Plaintiff (a).

[Proceed as in the form, ante, 328, No. 1, to the end of the issue, and then on a new line, thus:]

And on the — day of —, A.D. 1840 (*day of signing interlocutory judgment*), as to the said [first] count of the said declaration, the defendant says nothing in bar or preclusion of the said action of the plaintiff, with respect to the said [first] count, whereby the plaintiff remains therein undefended against the defendant in respect thereof; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the premises in the said [first] count mentioned. But because it is unknown to the court here what damages the plaintiff hath sustained on occasion thereof; and because it is convenient and necessary that there be but one taxation of the damages in this suit: Therefore let the giving of judgment in this behalf against the defendant be stayed, until the trial of the said issue above joined between the said parties. And thereupon as well to try the said last-mentioned issue, as to inquire of and assess the damages which the plaintiff hath sustained by reason of the [not performing of the said promise] in the said [first] count of the said declaration mentioned, the sheriff is commanded, [*&c. proceed as in the award of the venire, as ante, 43, No. 1, then proceed in the entry as directed, ante, 92, to these words in the postea*], being chosen, tried, and sworn, as to the said issue within joined between the parties, say upon their oath that the defendant did promise in manner and form as the plaintiff hath within in that behalf complained against him: And they assess the damages of the plaintiff, as well by reason of the not performing the said several promises in the said [second and subsequent] counts of the said declaration within-mentioned, as by reason of the not performing the said promise in the said [first] count of the said declaration within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £—, and for those costs and charges to 40s. Therefore, [*&c. then conclude stating the judgment as usual. See ante, 102, &c.*]

9. Judgment in assumpsit, where one Defendant suffers Judgment by Default and the other pleads to Issue, and the Issue is found for Plaintiff (b).

[Proceed as in the form, ante, 328, No. 1, to the end of the issue, and then, on a new line, thus:]

And the said E. F. in his proper person says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the said E. F.: Wherefore, on the — day of —, A.D. 1840 (*day of signing interlocutory judgment*), the plaintiff ought to recover against the said E. F. his damages on occasion of the premises. But because it is unknown to the court here what damages the plaintiff hath sustained on occasion thereof, and because it is convenient and necessary that there be but one taxation of the damages in this suit, therefore let the giving of judgment in this behalf against the said E. F. be stayed, until the trial of the said issue above joined between the

(a) See form of award of venire in such a case, ante, 45, No. 5.

(b) See a form of award of venire in such a case, ante, 44, No. 4.

plaintiff and the said *C. D.*, and thereupon as well to try the said issue so joined, as to inquire of and assess the damages which the plaintiff hath sustained by reason of the [not performing the] above promises by the said *C. D.* the sheriff is commanded [*&c. proceed as in the award of the venire, as ante, 44, then continue the entry as directed, ante, 92, to these words in the postea*], being chosen, tried, and sworn*, say upon their oath that the said *C. D.* did promise in manner and form as the plaintiff hath within complained against him; and they assess the damages of the plaintiff by reason of the not performing the promises within mentioned, as well against the said *C. D.* as against the said *E. F.*, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to 40s. Therefore [*&c. conclude, stating the judgment as in ordinary cases. See ante, 102.*]

10. *Judgment in an Action ex delicto, where one Defendant suffers Judgment by Default, and the other pleads to Issue, and the Issue is found for him (a).*

[*Proceed as directed in the preceding form, mutatis mutandis, to the asterisk*, and then thus:*] say upon their oath that the said *C. D.* is not guilty of the several grievances [or “trespasses”] within laid to his charge in manner and form as the plaintiff hath within complained against him: and they assess the damages of the plaintiff against *E. F.*, by reason of the premises within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to 40s. Therefore [*&c. conclude, stating the judgment as in the form, ante, 107, Nos. 19, 20.*]

11. *The like, in Action ex contractu (b).*

[*Proceed as directed in the form, ante, 332, No. 9, to the asterisk*, and then thus:*] say upon their oath that the said *C. D.* did not promise in the manner and form as the plaintiff hath within complained against him. Whereupon the said jurors are discharged from inquiring against the said *E. F.* what damages the plaintiff hath sustained by reason of the premises within mentioned. Therefore it is considered that the plaintiff take nothing by his said writ, but that he be in mercy &c.; and that the said *E. F.* do go thereof without day, &c. And it is further considered by the court here that the said *C. D.* do recover [*&c. conclude, stating the judgment for the defendant, who succeeded on the issue, as ante, 108, No. 23.*]

12. *Judgment by Non sum informatus, in Assumpsit (c).*

[*Proceed as directed, ante, 328, to the end of the declaration, and then, on a new line, thus:*]

And on the —— day of ——, A. D. 1840 (*day of signing interlocutory judgment*), the defendant, by *D. A.* his attorney, comes, and the plaintiff prays that the defendant may answer his said declaration; whereupon the said attorney of the defendant says, that he is not informed by the de-

(a) See form of award of venire, ante, 46, No. 7.

see a form of award of venire, ante, 45, No. 5.

(b) See 2 Chit. Ar. Pr. 701; and

(c) See 2 Chit. Ar. Pr. 700.

him about his suit in this behalf expended. And hereupon the plaintiff, according to the form of the statute in such case made and provided, suggests and gives the court here to understand and be informed that the said writing obligatory was also subject to a certain condition thereunder written, whereby, after reciting that [*&c. state the recitals in the past tense*], it was declared that the condition of the said writing obligatory was such that if, [*&c. state the condition in the past tense*] (a), as by the said writing obligatory, reference being thereunto had, will more fully appear: (*then state the breaches thus:*) Nevertheless for a breach of the said condition of the said writing obligatory, the plaintiff, according to the form of the statute in such case made and provided, suggests and gives the court here to understand and be informed, that the defendant did not, nor would [*&c. state the breach; and if there be two or more breaches, state them thus:*] And the plaintiff, for assigning a further breach of the said condition of the said writing obligatory, according to the form of the statute in such case made and provided, further suggests and gives the court here to understand and be informed, that &c." (*state the further breach.*) [*Conclude stating the award of the writ of inquiry as in the preceding form, except instead of the words "breaches assigned," say "breaches suggested."*]

3. *Writ of Inquiry, to be executed before the Sheriff, on a Judgment by Default, where the Breaches have been assigned in the Pleadings.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas *A. B.* lately in our court before us [*or in C. P. "before our justices," or in Exch. "before our barons of the Exchequer,*] at Westminster, by *P. A.* his attorney [*or if in person, say "in his own proper*

(a) If the bond be for the performance of covenants in another indenture, then such indenture must be here set forth, as thus:—And the plaintiff further suggests and gives the court here to understand and be informed, that in and by the said indenture of release mentioned and referred to in the said condition of the said writing obligatory, the defendant, for the consideration therein mentioned, did grant &c. (*as in indenture*) to have and to hold &c. (*as in indenture*), but subject nevertheless to a certain proviso, condition, or agreement, for the redemption of the said premises, being the proviso or condition mentioned and referred to in and by the said condition of the said writing obligatory in that behalf, whereby it was provided, &c. [*reciting the proviso.*—And for a breach of the said condition of the said writing obligatory, the plaintiff, according to the form of the statute in such case made and provided, further suggests and gives the court here to understand

and be informed, that the defendant did not nor would well and truly pay, or cause to be paid, unto the said *A. B.* the said sum of £— and interest in the said condition of the said writing obligatory mentioned, on the said — day of — next ensuing the date of the said writing obligatory, or at any time before or afterwards, according to and in full discharge of the said proviso or condition mentioned and referred to in and by the said condition of the said writing obligatory, and according to the form and effect of the same condition, and wholly neglected and refused so to do, and therein failed and made default, and the said sum of £—, together with a certain other sum of money, to wit, £—, for the interest thereon, payable as aforesaid, is still wholly due and unpaid to the plaintiff, contrary to the form and effect of the said condition of the said writing obligatory; and because [*&c. conclude from the † in the preceding form.*]

person"], complained of *C. D.* who had been summoned (*as in the commencement of the declaration*) to answer the said *A. B.* in an action of debt, and he demanded of him £——, which he owed to and unjustly detained from him*: For that whereas the defendant [*&c. reciting the declaration throughout*] to the damage of the plaintiff of £——, as he said, and therefore he brought his suit &c. And such proceedings were thereupon had in our said court, that it was afterwards considered by the same court that the said *A. B.* ought to recover against the said *C. D.* his debt aforesaid, together with his damages which he had sustained, as well on occasion of the detention thereof, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record, [*or in C. P. omit the words "as appears to us of record," or in Exch. say "as by inspecting the rolls of our said Exchequer will more fully appear:"*] and the said *A. B.* having prayed our writ, to inquire of the truth of the aforesaid breach [*or breaches*] of the said condition of the said writing obligatory above assigned, and to assess the damages which the said *A. B.* hath sustained thereby; therefore, according to the form of the statutes in that case made and provided, we command you the said sheriff, that you summon twelve free and lawful men of your bailiwick to appear† before you (*a*), by their oath, diligently to inquire of the truth of the said breach [*or "breaches"*] and to assess the damages which the said *A. B.* hath sustained by reason of the same; and that you send to us [*or in C. P. "to our justices," or in Exch. "to our barons"*] at Westminster, on ——, the inquisition which you shall thereupon take under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness —— (*name of chief justice, or in Exch. of chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

[*See 2 Chit. Ar. Pr. 726.*]

4. *The like, where the Breaches have not been assigned in the Pleadings, but have been suggested.*

[*Proceed as in the preceding form to the asterisk*, and then thus:*] Upon and by virtue of a certain writing obligatory, in the penal sum of £——, bearing date [*&c. date of bond*], and sealed with the seal of the said *C. D.** And such proceedings were thereupon had in our said court, that it was afterwards considered by the same court, that the said *A. B.* ought to recover against the said *C. D.* his debt aforesaid, together with his damages which he had sustained, as well on occasion of the detention thereof, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record [*or in C. P. or Exch. as supra:*] And thereupon the said *A. B.*, according to the form of the statute in such case made and provided, suggested upon the roll whereon the said judgment so recovered against the said *C. D.* as aforesaid is entered to the effect following, to wit; that the said writing obligatory, whereon the said judgment was so recovered against the said *C. D.* as aforesaid, was made and given by him the said *C. D.*, under and subject to a certain condition thereto subscribed, whereby, after reciting [*&c. state the recital,*] it was declared, that if [*&c. state the condition in*

(*a*) There does not seem any occasion to name a time or place in this writ for the execution of it.

the past tense:] And the said *A. B.* further suggested on the said roll whereon the said judgment so recovered against the said *C. D.* was and is so entered as aforesaid, that [*&c. state the suggestion of breaches, &c. as in the entry, ante, 346, No. 2, to the prayer of the writ of inquiry, and then proceed thus:]* as we have received information from the said *A. B.* in our said court: And the said *A. B.* having prayed our writ to inquire of the truth of the aforesaid breaches of the said condition of the said writing obligatory above suggested, and to assess the damages which he the said *A. B.* hath sustained thereby; therefore, according to the form of the statutes in such case made and provided, we command you the said sheriff, that [*&c. conclude as in the preceding form.*]

[*See 2 Chit. Ar. Pr. 726.*]

5. *Rule Nisi in Q. B. or Exchequer, to have the Inquiry executed before the Chief Justice or a Judge at the Assizes.*

On the — day of —, A. D. —.

B. } Upon reading the affidavit of the plaintiff, it is ordered that the
v. } defendant, upon notice of this rule to be given to him [*or where he*
D. } *has appeared by attorney, "to his attorney or agent"*], shall upon
— next show cause why the writ of inquiry of damages in this cause should not be executed before the sheriff of —, at the next assizes to be holden for that county, in the presence of one of her majesty's justices to be assigned to take the assizes in and for the said county [*or in a town cause, "at the sittings of nisi prius to be holden for Middlesex (or 'London,') after this present term, in the presence of the lord chief justice or one other of the justices of this court."*] On the motion of Mr. —.

By the Court.

[*See 2 Chit. Ar. Pr. 726.*]

6. *The like, in C. P.*

On —, the — day of —, A. D. —.

B. } Upon reading the affidavit of the plaintiff, it is ordered that the
v. } defendant, upon notice of this rule to be given to him, [*or "his*
D. } *attorney or agent,"*] shall show cause to this court to-morrow peremptorily, before the rising of the court, otherwise this rule shall then be absolute, why the writ of inquiry of damages in this cause should not be executed before [*&c. conclude as in the preceding form.*]

7. *Judge's Fiat for it in Vacation.*

[*Same as in the form, ante, 337, No. 6, stating that the writ is to be executed as in the form supra.*]

8. *Affidavit of Service of Rule.*

[*Same as the form ante, 337, No. 5.*]

9. *Writ of Inquiry to be executed before the Chief Justice or Justices or Assize, where the Breaches have been assigned in the Pleadings.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, and to the Right Honourable Thomas Lord Denman, our chief justice assigned to hold pleas in our court before us, [or in C. P. "and to Sir Nicholas Conyngham Tindal, knight, our chief justice of the Bench," or in Erch. "and to the Right Honourable James Lord Abinger, chief baron of our Court of Exchequer," or if the writ is to be executed at the assizes, "and to our justices assigned to take the assizes in and for your county,"] greeting: Whereas A. B. lately [&c. proceed as in the form, ante, 346, No. 3, to the†, and then thus:] before the Right Honourable Thomas Lord Denman, our chief justice aforesaid, [or in C. P. "Sir Nicholas Conyngham Tindal, knight, our chief justice aforesaid," or in Erch. "the Right Honourable James Lord Abinger, our chief baron aforesaid," or at the assizes, "our said justices of assize,"] on —, (the first day of sittings, or the commission day of the assizes,) at Westminster Hall, in the county of Middlesex, or "at the Guildhall of London," [or "at — (where the assizes are to be holden) in your county,"] by their oath diligently to inquire of the truth of the said breach [or "breaches"], and to assess the damages which the said A. B. hath sustained by reason of the same; and have you there then this writ before our said chief justice [or "chief baron," or "justices of assize"], that the inquisition which shall thereupon be taken before him [or "them"], he [or "they"] certify to us [or in C. P. "to our justices," or in Erch. "to the barons of our Exchequer"], at Westminster, on —, under his seal [or "their seals"], together with the names of those by whose oath he [or "they"] shall take the said inquisition: and he [or "they"] have there then [or in C. P. or Erch. omit the word "then"] this writ. Witness, —, (name of chief justice, or in Erch. of chief baron,) at Westminster, the — day of —, in the year of our Lord —.

10. *The like, where the Breaches have not been assigned in the Pleadings, but have been suggested.*

[A form may be readily framed from the preceding form, and that ante, 347, No. 4.]

11. *Notice of Inquiry.*

[Same as the forms, ante 338, except that instead of calling the writ a "writ of inquiry of damages," say "a writ of inquiry to inquire of the truth of the breaches assigned [or 'suggested'] by the plaintiff, of the condition of the writing obligatory, and to assess the damages which he hath sustained thereby."]

12. *Subpœna, &c.*

[Same as the forms, ante, 339, 340, mutatis mutandis.]

13. *The Inquisition and Return where the Inquiry was executed before the Sheriff.*

— to wit. An inquisition indented, taken at the Secondaries Office &c. [or “at the house of —, called or known by the name or sign of —, in the said county of —,”] (*as in the notice of inquiry*), on the — day of —, in the — year of the reign of our lady the now Queen Victoria, before S. S. sheriff of the county aforesaid, by virtue of a writ of our said lady the queen, to the said sheriff directed and delivered, and to this inquisition annexed, to inquire of the truth of the within-mentioned breach [or “breaches”] of the condition of the within-mentioned writing obligatory, and to assess the damages which the within-named *A. B.* hath sustained thereby, by the oath of *J. J., T. P. &c.* (*name the jurors who sat on the inquest*), honest, free, and lawful men of the said county, who being charged and sworn upon their oath, say that the said breach [or “breaches”] of the said condition is [or “are”] true, and that the said *A. B.* hath sustained damages by the aforesaid breach [or “breaches”] to the sum of £—, besides his costs and charges by him about his suit in this behalf expended, and for his costs and charges aforesaid, the sum of 40s. In witness whereof, as well I the said sheriff as the said jurors have set our seals to this inquisition the day and year above written.

(*Signatures and seals of the sheriff and jurors.*)

Sheriff's Return to be indorsed on the writ of inquiry.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of S. S. Sheriff.

[See 2 *Chit. Ar. Pr.* 727.]

14. *The like, where the Inquiry was executed at the Sittings or Assizes.*

— to wit. An inquisition indented, taken before me Thomas Lord Denman, her majesty's chief justice assigned to hold pleas in the court of the lady the queen, before the queen herself [or in *C. P.* “Sir Nicholas Conyngham Tindal, knight, her majesty's chief justice of the Bench,” or in *Exch.* “the Right Honourable James Lord Abinger, her majesty's chief baron of her Exchequer at Westminster,” or at the assizes, “before us — and —, her majesty's justices assigned to take the assizes in and for the county of —”], on — the — day of —, in the year of our Lord 18—, at — in the county of —, by virtue of her majesty's writ, directed to the sheriff of the said county, and to me the said chief justice, [or “chief baron,” or “to us the said justices of assize,”] and to this inquisition annexed, by the oath of *J. J.* [&c. *names of jurors*], twelve good and lawful men of the county aforesaid, who being sworn and charged, upon their oath say, that the breach [or “breaches”] of the condition of the said writing obligatory in the said writ mentioned, is [or “are”] true; and that *A. B.* in the said writ named hath sustained damages, by the aforesaid breach [or “breaches”] of the said condition, besides his costs and charges by him about his suit in this behalf expended, to £—. In witness whereof, I the said chief justice [or “chief baron”] have hereunto set my hand and seal, [or “we the said justices of assize have hereunto set our hands and seals,”] the day and year, and at the place above-mentioned.

Judge's Return to be indorsed on the writ of inquiry.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of —, the chief justice [or "chief baron," or "of — and —, the justices of assize"] within-named.

[See 2 Chit. Ar. Pr. 727.]

15. Execution thereon.

The writ of execution is the same as in ordinary cases in debt; see ante, 150, 151, but it must be indorsed to "Levy £—, being the amount of the damages in this case assessed by the jury, by reason of the breaches suggested [or 'assigned'] in this behalf; and also £—, the amount adjudged to the plaintiff in this case by the court, for his damages, costs, and charges, together with interest on the said several sums of £— and £—, at £4 per cent., from — 18—(a),] besides sheriff's poundage, officers' fees, and all other incidental expenses"] (b).

*P. A. Temple, plaintiff's attorney.
—, 1840.*

16. Entry of final Judgment, and of Satisfaction upon the Roll.

[Proceed as in the entries, ante, 344, 345, respectively, to the end of the award of the writ of inquiry and then thus:] At which day come here, as well the plaintiff as the defendant, by their respective attornies aforesaid, [or upon a judgment by default, "comes here the plaintiff by his attorney aforesaid"]; and the said sheriff, to wit, S. S. sheriff of — aforesaid, [or "chief justice," or "chief baron,"] now here returns [or "the said justices of assize now here return"] a certain inquisition indented, taken before him [or "them"] at —, in the county aforesaid, on —, by virtue of the said writ, by the oath of twelve free and lawful men of the said county of —; by which it is found that [&c. state the finding of the inquest with respect to the breaches suggested or assigned, or say, "that the breach of the condition of the said writing obligatory in the said writ mentioned is true"], and that the plaintiff hath sustained damages by reason thereof to the sum of £— over and above his costs and charges by him about his suit in that behalf expended, and for those costs and charges to 40s.: Therefore it is considered that the plaintiff do recover against the defendant his said debt, and also 1s. for his damages which he hath sustained on occasion of the detention thereof &c. It is also considered that the plaintiff do recover against the defendant his costs and charges aforesaid, by the said inquisition above found, and also £— for his said costs and charges by the court here adjudged of increase to the plaintiff, and with his assent; and the defendant in mercy &c. (c). [Then, on a new line, enter the execution and satisfaction, thus:]

(a) As to levying interest, see 1 Chit. Ar. Pr. 344.

(b) If it be a ca. sa. omit these; see ante, 191.

(c) Add the marginal notes as directed at the end of the form, ante, 160. The form in Tidd's Forms, p. 214, omits the subsequent part of the

above form, as to the statement of the awarding and issuing and executing the writ of execution, &c. and after the statement of the judgment to the words "in mercy" &c. inclusive, conclude thus: "And hereupon the plaintiff, by his attorney aforesaid, acknowledgeth himself to be satisfied

Afterwards, that is to say, on — (teste of the fieri facias), comes here the plaintiff by his attorney aforesaid, and prays the writ of our said lady the queen of fieri facias, to be directed to the sheriff of the said county of —, commanding him that he cause to be levied of the goods and chattels in his bailiwick of the defendant, the debt and damages aforesaid, together with interest thereon, according to the form of the statute in such case made and provided, the said writ to be indorsed to levy £—, being the amount of the damages above assessed by the jury by reason of the breach [or “breaches”] above suggested [or “assigned”], and also the further sum of £— by the court here adjudged to the plaintiff for his damages, costs, and charges as aforesaid, and also interest on the said several sums of £— and £— at the rate of £4 per centum per annum, from the — day of — A. D. —, on which day the judgment aforesaid was entered up, [or if entered up before the 1st of October, 1838, say “from the 1st day of October, A. D. 1838,” and omit the words “on which day the judgment aforesaid was entered up”], together with all reasonable costs of executing the said writ; and it is granted to him, returnable here immediately after the execution thereof; the same day is given to the plaintiff here. And on — comes here the plaintiff by his attorney aforesaid; and the said sheriff of — now here returns, that by virtue of the said writ to him in this behalf directed, he caused to be levied of the goods and chattels in his bailiwick, as well the said sum of £—, parcel of the debt aforesaid, as also the said sum of £— for the damages, costs, and charges aforesaid, together with £— for interest, at the rate and from the day aforesaid, and £— for the reasonable charges and expenses of executing the said writ; which said several sums he has now ready here in court to render unto the plaintiff, as by the said writ he is commanded. Whereupon the plaintiff now here acknowledges that he has been fully paid and satisfied the amount of the said damages so assessed by reason of the said breaches as aforesaid, and of the damages, costs, and charges so adjudged by the court here as aforesaid, and of the interest thereon, at the rate and from the day aforesaid, and also the amount of the reasonable charges and expenses of executing the said writ, and whereupon the said goods of the said defendant are now here discharged of and from the said execution; therefore let the defendant be thereof acquitted and discharged &c.

[See 2 Chit. Ar. Pr. 727.]

II. PROCEEDINGS AFTER ISSUE JOINED.

1. The Issue and Award of Venire.

[See the forms, ante, 47, 48. See 2 Chit. Ar. Pr. 728, 729.]

2. Venire Facias.

[See the form, ante, 70, No. 5.]

by the defendant of the damages aforesaid, in form aforesaid assessed, and also his damages by him sustained on occasion of the detention of the said debt: Therefore let the said defendant

be acquitted of the several damages aforesaid, and all further proceedings for the recovery thereof be stayed, &c.” See the form given in 1 Saund. 58 (c): and Arch. Forms, 361.

3. *Postea thereon.*

[*See the forms, ante, 93, Nos. 3, 4. See 2 Chit. Ar. Pr. 728, 729.*]

4. *Judgment thereon.*

[*See the form, ante, 104. See 2 Chit. Ar. Pr. 729.*]

5. *Execution thereon.*

[*The same as usual in debt, but indorse the writ as directed, ante, 351, No. 15. See 2 Chit. Ar. Pr. 729.*]

III. PROCEEDINGS BY SCIRE FACIAS ON FURTHER BREACHES:

1. *Suggestion of further Breaches.*

Afterwards, to wit, on — the — day of — A.D. —, before our said lady the queen at Westminster comes the plaintiff by *P. A.* his attorney, and according to the form of the statute in such case made and provided, gives the same court here to understand and be informed that the declaration of the plaintiff in the said action in which he so obtained such judgment as aforesaid, was commenced upon the — day of —, A.D. —, and that the said action was brought and commenced upon and for certain breaches of the condition of the said writing obligatory by the defendant before the commencement of the said action, and the plaintiff, for further and other breaches of the said condition of the said writing obligatory, according to the form of the statute in such case made and provided, gives her said majesty's court here to understand and be informed, that after the recovery of the said judgment, to wit, on the — day of —, in the year of our Lord — [*here state a breach according to the facts*], contrary to the form and effect of the said condition of the said writing obligatory, and also that [*here state any other breach according to the facts*], contrary to the form and effect of the said condition of the said writing obligatory, which said [two] last-mentioned breaches of the said condition so assigned the plaintiff doth aver and doth give her majesty's court here to understand and be informed, are further and other breaches of the said condition than the said breaches for and by reason of which he obtained the said judgment so by him recovered as aforesaid, and hereupon the plaintiff, according to the form of the statute in such case made and provided, prays the writ of our said lady the queen of *scire facias*, upon the said judgment so obtained as aforesaid against the defendant, to be directed to the said sheriff of Middlesex, suggesting the said further and other breaches of the said condition of the said writing obligatory herein before assigned, and commanding the said sheriff to summon the defendant, to show cause why execution should not be had and awarded upon the said judgment, for the damages which the plaintiff hath sustained by reason of the said further and other breaches of the said condition of the said writing obligatory, and it is granted to him &c., returnable before our said lady the queen at Westminster, on — the — day of — next; the same day is given to the defendant at the same place.

2. *Scire Facias on suggesting a further Breach.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas *A. B.* heretofore, to wit, on the — day of —, A.D. —, (*date of final judgment,*) in our court before us [*or in C. P. "in our court before our justices," or in Exch. "in our court before the barons of our Exchequer"*] at Westminster, by the judgment of the same court, recovered against *C. D.* a certain debt of £—, and also — shillings, for his damages which he had sustained, as well on occasion of the detaining of the said debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* was convicted, as by the record and proceedings thereof remaining in our said court at Westminster aforesaid manifestly appears: which said judgment, so recovered against the said *C. D.* as aforesaid, was had and obtained upon a certain writing obligatory, bearing date the — day of —, in the year of our Lord —, and sealed with the seal of the said *C. D.*, whereby the said *C. D.* became held and firmly bound to the said *A. B.* in the said sum of £—, to be paid to the said *A. B.* when the said *C. D.* should be thereto afterwards requested: with and under a certain condition to the said writing obligatory subscribed, whereby, after reciting that [*&c. state the recital in the condition of the bond*], it was declared that if the said *C. D.* [*&c. state the whole of the condition*]: And whereas the said *A. B.* heretofore assigned [*or if after judgment by default, "suggested"*] a certain breach of the said condition of the said writing obligatory, according to the form of the statute in such case made and provided, to wit, that [*&c. recite the former breach or breaches contained in the roll*]; and damages were thereupon assessed, for and by reason of the said breach [*or "breaches"*] so assigned [*or "suggested"*]; which damages have been since paid and satisfied (*a*): *And whereas it has been and is suggested by the said *A. B.* in our said court, as and by way of another and further breach of the said condition of the said writing obligatory than the said breach [*or "breaches"*] so assigned [*or "suggested"*] as aforesaid, that after the recovery of the said judgment [*&c. here state the further breach*]: for which said last-mentioned breach of the aforesaid condition of the said writing obligatory, the said *A. B.* hath humbly besought us to provide him a proper remedy: And we being willing that what is just in this behalf should be done, do, according to the form of the statute in such case made and provided, command you, that by honest and lawful men of your bailiwick, you make known to the said *C. D.* that he be before us [*or in C. P. "before our justices," or in Exch. "before our barons"*], at Westminster, on —, to show cause why execution should not be had and awarded against him, upon the said judgment so obtained as aforesaid, for the damages to be assessed by reason of the said last-mentioned breach of the said condition of the said writing obligatory, if it shall seem expedient for the said *A. B.*; and further to do and receive what our said court shall then and there consider of him in this behalf; and have there then [*in C. P. or in Exch. omit the word "then"*] the names of those by whom you shall so make known to him and this writ. Witness (*name of chief justice, or in Exch. of chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 729.]

(a) See a different form, Arch. Forms, 365.

3. *The like, after a former Scire Facias.*

[*Proceed as in the preceding form to the asterisk*, and then thus:*] And whereas after the recovery of the said judgment, to wit, on the — day of —, A.D. —, there issued out of our said court our certain writ of scire facias upon the said judgment, against the said C. D., according to the form of the statute in such case made and provided, suggesting another and further breach of the said condition of the said writing obligatory [*state concisely the nature of the breach, which if it be for non-payment of an annuity, may be thus:* “in the non-payment of the sum of £—, for — of the said annuity or yearly sum of £—, which became due and owing from the said C. D. to the said A. B. on the — day of —, in the year of our Lord —”]; and which said sum of £— hath been also paid and satisfied. And whereas it hath been and is duly suggested by the said A. B. in our said court, as and by way of another and further breach of the said condition of the said writing obligatory than the said breaches respectively assigned and suggested as aforesaid, that [*&c. state the further breach and proceed thus:*] for which said last-mentioned breach of the said condition of the said writing obligatory the said A. B. hath humbly besought us to provide him a proper remedy: And we being willing [*&c. conclude as in the preceding form, mutatis mutandis.*]

[*See 2 Chit. Ar. Pr. 729.*]

4. *Judgment in Scire Facias after a suggestion of further breaches on a Judgment in Debt on Bond.*

On the — day of — in the — year of the reign of queen Victoria. Witness Thomas Lord Denman.

Middlesex to wit. Our lady the queen Victoria sent to her sheriff of Middlesex her writ close in these words, that is to say, Victoria, by the grace of God &c. [*copy the scire facias to the teste inclusive*], at which day before our said lady the queen at Westminster comes the said A. B. in his proper person, and the sheriff to wit, sir J. D. knight, and J. J. esquire, sheriff of Middlesex aforesaid, now here returns that the said C. D. had nothing in his bailiwick where or by which he can make known to him as by the said writ he is commanded, and that the said C. D. is not found in the same, and the said C. D., although on that day solemnly demanded, comes not, but makes default. Therefore it is considered that the said A. B. ought to have his execution against the said C. D. upon the said judgment so obtained as aforesaid, according to the force, form, and effect of the said recovery, as well for the said sum of £—, as for the damages to be assessed by reason of the said further breaches of the said writing obligatory, committed since the said first mentioned breach, by the default of the said C. D.; but because it is convenient and necessary that final judgment of and upon the premises aforesaid should not be given until such time as the truth of the said further breaches above assigned and committed since the said first mentioned breach shall have been inquired into, and the damages by the said A. B. sustained by reason of those breaches shall have been assessed by a jury of the country in that behalf, according to the form of the statutes in such case made and provided; let the giving of judgment hereupon be stayed until such time accordingly: and because, according to the form of the statutes in such case made and provided, a jury of the country ought to inquire of the truth of these further breaches, and to assess the damages that the said A. B. hath sustained thereby, and the plaintiff having had our writ

for that purpose, therefore sir *J. D.* knight, and *J. J.* esquire, the sheriff of the said county of Middlesex, is commanded to summon twelve free and lawful men of his bailiwick to appear before the said sheriff, on the — day of —, in the year of our Lord —, at the house known by the name of the Sheriff's Office, No. —, Red Lion Square, in the said county, to inquire diligently by their oath of the truth of those further breaches, and to assess the damages which the said *A. B.* hath sustained by reason of the same, and send to our said lady the queen at Westminster, on —, the — day of —, A.D. —, the inquisition which he shall thereupon take under his seal, and the seals of those by whose oath he shall take that inquisition, together with the said writ; the same day is given to the said *A. B.*: At which day come here the said *A. B.* in his own person, and the said sheriff, to wit, sir *J. D.* knight, and *J. J.* esquire, sheriff of Middlesex aforesaid, now here returns a certain inquisition indented, taken before him on the — day of —, A.D. —, at the house known by the name of the Sheriff's Office, No. —, Red Lion Square, in the county aforesaid, by virtue of the said writ, by the oath of twelve good and lawful men of the said county of Middlesex, by which it is found that the said *A. B.*, in the said writ named, by reason of the premises in the said writ mentioned, hath sustained damages besides his costs and charges by him about his suit in this behalf expended, to £—, and for those costs and charges to 20s.; therefore it is considered that the said *C. D.* do pay *A. B.* the said sums of £—, and £—. It is also considered, that the said *E. L.* do recover against the defendant the said sum of 20s. for his costs and charges aforesaid, by the said inquisition above found, and also £17 for his costs and charges by the court here adjudged of increase to the said *A. B.*, and with his assent, and the said *C. D.* in mercy &c.

BOOK III.

PART I.

PROCEEDINGS IN PARTICULAR ACTIONS.

CHAPTER I.

EJECTMENT.

SECT. I. *In Ordinary Cases*, 357 to 395.

II. *On a Vacant Possession*, 396 to 398.

III. *By Landlord against Tenant, under Stat. 4 Geo. 2, c. 28*, 398, 399.

IV. *By Landlord against Tenant, under Stat. 1 Geo. 4, c. 87*, 400 to 410.

V. *By Landlord against Tenant, under 11 Geo. 4, and 1 Will. 4, c. 70, ss. 36, 37*, 410 to 412.

SECT. I.—PROCEEDINGS IN EJECTMENT IN ORDINARY CASES.

1. *Notice to quit by Landlord.*

Sir,

I hereby [*if as agent, add "as the agent for and on behalf of your landlord A. B. of —"*] give you notice to quit and deliver up, on the — day of — next, the possession of the messuage [*or "rooms and apartments," or "farm, land"*] and premises, with the appurtenances, which you now hold of me [*or "of the said A. B."*] situate in the parish of —, in the county of —. [*If there be any doubt as to when the tenancy commenced, here say "provided your tenancy originally commenced at that time of the year; or otherwise, that you quit and deliver up the possession of the said messuage &c. (as before) at the end of the year of your tenancy, which will expire next after the end of half a year from the time of your being served with this notice."*] Dated the — day of —, 18—.

To Mr. C. D. (*the lessee
and not the under-tenant*)
or whom else it may concern.

Your's, &c. A. B.

[*or if as agent, say*

"E. F. agent for the said A. B."]

[*See 2 Chit. Ar. Pr. 733, 734.*]

2. *Notice by a Joint-tenant or Tenant in Common, to determine Tenancy of a Moiety, &c.*

Sir,

I hereby give you notice of my intention to determine, on the — day of — next, the tenancy under which you now hold of me one undivided moiety or half part (*as the case may be*) of and in a messuage [&c. conclude as in the preceding form.]

3. *Notice to quit by Tenant.*

Sir,

I hereby give you notice that I shall on the — day of — next, quit and deliver up the possession of the messuage [&c.] situate [&c.] which I now hold of you.

To Mr. A. B.
(*the landlord.*)

Your's &c.
C. D.

4. *Acknowledgment under 3 & 4 Will. 4, c. 27, s. 14, taking effect as the possession of the person really entitled at the date of the acknowledgment (a).*

I, A. B., now in possession [*or "in receipt of the profits," as the case may be*] of the messuage [*or "farm, land," &c.*] and premises, with the appurtenances, called —, in the parish of —, in the county of —, [*it may prevent dispute to describe the property here more particularly, e. g. "consisting of one dwelling-house and out offices, one garden, two orchards, 100 acres of arable land, 50 acres of pasture land, &c."*] hereby acknowledge that I am in possession [*or "in receipt, &c."*] by the sufferance and subject to the title of C. D., the person really entitled to the possession [*or "the receipt, &c."*] of the said premises: And I give this acknowledgment with the intent that my possession [*or "receipt, &c."*] of the said premises may be deemed to be the possession of [*or "the receipt of the profits by"*] the said C. D. so as to preserve his, the said C. D.'s, right of entry into the same, according to the intent of the statute in such case made and provided. Dated this — day of —, A.D. 1840.

(Signed.)

A. B.

To Mr. C. D. [*or "E. F. agent of C. D."*]

5. *Original Writ (b).*

Victoria [&c. *ante*, 354, No. 2,] to the sheriff of —, greeting: If John Doe shall give you security for prosecuting his claim, then put by gages and safe pledges Richard Roe, late of —, yeoman, that he be before us on —, wheresoever we shall then be in England, [*or in C. P. "that he be before our justices at Westminster, on —,"*] to show wherefore, with force and arms, he entered into — messuages, &c. [*as in the declaration*] with the appurtenances, in —, which A. B. hath demised to the said John Doe, for a term which is not yet expired, and

(a) This need not be stamped, see *Barry v. Goodman*, 2 M. & W. 768.

(b) This writ is now rarely ever

used except on error brought for want of it.

ejected him from his said farm, and other wrongs to the said *John Doe* there did, to the great damage of the said *John Doe*, and against our peace. And have you there the names of the pledges and this writ. Witness ourself at Westminster, the — day of —, in the — year of our reign.

Pledges to prosecute, { *John Den,*
 { *Richard Fen.*

6. *Sheriff's Return thereto.*

The within-named *Richard Roe* { *John Smith,*
is attached by pledges, { *William Stiles.*

7. *Declaration by Original, and Notice to appear in Q. B. or C. P. on a single Demise.*

In the Queen's Bench [or "Common Pleas."]

— term, in the — year of the reign of Queen Victoria
(*the term preceding that in which you require the tenant to appear, or it seems no objection to the declaration being entitled of a particular day, as other declarations.*)

— (to wit.) *Richard Roe* was attached to answer *John Doe*, of a plea of trespass and ejectment, and thereupon the said *John Doe* by *P. A.* his attorney complains against the said *Richard Roe*: For that *L. P.* (*the lessor of the plaintiff*) on the — day of —, A.D.—, (*the day of the demise*) demised to the said *John Doe* — messuages, — dwelling-houses, — cottages, — barns, — stables, — out-houses, — yards, — gardens, — orchards, — acres of arable land, — acres of meadow land, — acres of pasture land, — acres of land covered with wood, — acres of land covered with water, and — acres of other land, with the appurtenances, situate in the parish of —, in the county of —; to have and to hold the same to him the said *John Doe* and his assigns, from thenceforth for and during the term of seven years (*state enough to cover the time beyond the trial of the action*) from thence next ensuing, and fully to be complete and ended: By virtue of which said demise the said *John Doe* entered into the said tenements, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted: and the said *John Doe* being so thereof possessed, the said *Richard Roe* afterwards, to wit, on the same day and year aforesaid, with force and arms &c. entered into the said tenements with the appurtenances in which the said *John Doe* was so interested, in manner and for the term aforesaid, which is not yet expired, and ejected the said *John Doe* from his said farm, and other wrongs to the said *John Doe* then and there did, to the great damage of the said *John Doe*, and against the peace of our said lady the queen: Wherefore the said *John Doe* saith that he is injured, and hath sustained damage to the value of £—, and therefore he brings his suit &c.

Mr. C. D. [*&c. the tenant or tenants in possession.*]

I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear in next — term, [*or in London or Middlesex, "on the first day (or 'first four days') of next — term,"*] in her majesty's Court of Queen's Bench, wheresoever her

said majesty shall then be in England, [or in the *Common Pleas*, in her majesty's Court of Common Bench at Westminster,"] by some attorney of that court; and then and there, by rule of the same court, to cause yourself [or "yourselves"] to be made defendant [or "defendants"] in my stead; otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this — day of —, A.D. —.

Yours, &c. *Richard Roe*.

[See 2 *Chit. Ar. Pr.* 733.]

8. *The like, on two Demises and one Ouster.*

In the Queen's Bench [or "Common Pleas."]

— term, — Victoria [see *ante*, 359.]

— (to wit.) *Richard Roe* was attached to answer *John Doe* of a plea of trespass and ejectment, and thereupon the said *John Doe*, by *P. A.* his attorney, complains against the said *Richard Roe*: For that *L. P.* (the lessor of the plaintiff) on the — day of —, A.D. —, (the day of the demise), demised to the said *John Doe* — messuages [&c. as *ante*, 359], with the appurtenances, situate and being in the parish of —, in the county of —; to have and to hold the same to the said *John Doe* and his assigns from thenceforth for and during the term of seven years from thence next ensuing, and fully to be complete and ended: And also for that the said *L. P.* [or "one *P. P.*"] on the — day of —, in the year aforesaid, demised to the said *John Doe* — other messuages &c. [as *ante*, 359, inserting the word "other" before each parcel,] with the appurtenances situate and being in the parish and county aforesaid, to have and to hold the same to the said *John Doe* and his assigns, from thenceforth for and during and unto the term of seven years from thence next ensuing, and fully to be complete and ended: By virtue of which said several demises the said *John Doe* entered into the said several tenements with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted: And the said *John Doe* being so thereof possessed, the said *Richard Roe* afterwards, to wit, on the — day of —, in the year of our Lord — [or "day and year aforesaid"], with force and arms &c. entered into the said several tenements with the appurtenances, in which the said *John Doe* was so interested, in manner and for the several terms aforesaid, which are not yet expired, and ejected the said *John Doe* from his said several farms, and other wrongs &c. [conclude as in the preceding form, and add a similar notice to appear.]

9. *The like, with two Ousters.*

In the Queen's Bench [or "Common Pleas."]

— term, — Victoria [see *ante*, 359.]

— (to wit.) *Richard Roe* was attached to answer *John Doe* of a plea of trespass and ejectment, and thereupon the said *John Doe*, by *P. A.* his attorney, complains against the said *Richard Roe*: For that *L. P.* (the lessor of the plaintiff) on the — day of —, A.D. — (the day of the demise), demised to the said *John Doe* — messuages &c. [as *ante*, 359], with the appurtenances, situate in the parish of —, in the county of —; to have and to hold the same to the said *John Doe* and his assigns from thenceforth for and during the term of seven years

(*state enough*) from thence next ensuing, and fully to be complete and ended: By virtue of which said demise the said *John Doe* entered into the said tenements, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as aforesaid: And the said *John Doe* being so thereof possessed the said *Richard Roe* afterwards, to wit, on the day and year aforesaid, entered into the said tenements with the appurtenances, in which the said *John Doe* was so interested, in manner and for the term aforesaid, which is not yet expired, and ejected the said *John Doe* from his said farm: And also for that the said *L. P.* [*or "one P. P."*] on the said — day of —, in the year aforesaid, demised to the said *John Doe* — other messuages [*&c. as ante, 359, inserting the word "other" before each parcel,*] with the appurtenances, situate in the parish and county aforesaid: to have and to hold the same to the said *John Doe* and his assigns from thenceforth for and during and until the full end and term of seven years from thence next ensuing, and fully to be complete and ended: By virtue of which said last-mentioned demise, the said *John Doe* entered into the said several tenements secondly above mentioned with the appurtenances, and became and was so thereof possessed for the said last-mentioned term so to him thereof granted: And the said *John Doe* being so thereof possessed, the said *Richard Roe* afterwards, to wit, on the day and year last aforesaid, with force and arms &c. entered into the said last-mentioned tenements with the appurtenances, which the said *L. P.* [*or "P. P."*] had demised to the said *John Doe*, in manner and for the term last aforesaid, which is not yet expired, and ejected the said *John Doe* from his said last-mentioned farm; and other wrongs &c. [*conclude as usual, as in form, ante, 359, and add a similar notice to appear.*]

10. *Declaration by Bill in Q. B.*

— term, — Victoria [*see ante, 359.*]

— (to wit.) *John Doe* complains of *Richard Roe*, being in the custody of the marshal of the Marshalsea of our lady the now queen, before the queen herself, of a plea: For that *L. P.* on the — day of —, in the year of our Lord —, demised to the said *John Doe* — messuages [*&c. as ante, 359*], with the appurtenances, situate and being in the parish of —, in the county of —; to have and to hold the same to the said *John Doe* and his assigns from thenceforth for and during and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended; By virtue of which said demise the said *John Doe* entered into the said tenements with the appurtenances, and became and was possessed thereof for the said term so to him thereof granted: And the said *John Doe* being so thereof possessed, the said *Richard Roe* afterwards, to wit, on the day and year aforesaid, with force and arms &c., entered into the said tenements with the appurtenances, which the said *L. P.* had demised to the said *John Doe*, in manner and for the term aforesaid, which is not yet expired, and ejected the said *John Doe* from his said farm; and other wrongs to the said *John Doe* then and there did, against the peace of our said lady the queen, and to the damage of the said *John Doe* of £—, and therefore he brings his suit, &c.

Pledges to prosecute, { *John Den,*
and
Richard Fen.

Add the notice to appear, as ante, 359, except that you should require the

tenant to appear "in her majesty's Court of Queen's Bench at Westminster," instead of "in her majesty's Court of Queen's Bench, wheresoever her majesty shall then be in England."

11. *Declaration and Notice to appear in the Exchequer.*

In the Exchequer of Pleas.

— term, — Victoria [*see ante*, 359.]
 — (to wit.) *John Doe*, a debtor to our sovereign lady the now queen, comes before the barons of her majesty's Exchequer at Westminster, on the — day of — (*last day of the term preceding the time of service*), in this same term, by *P. A.* his attorney, and complains by bill against *Richard Roe*, present here in court the same day, of a plea of trespass and ejectment of farm: For that &c. [*proceed as in the preceding forms, but conclude thus:*] to the damage of the said *John Doe* of £—. whereby he is the less able to satisfy our said lady the queen of the debts which he owes to her majesty, at her said Exchequer, and therefore he brings his suit &c.

Pledges &c. [*as ante*, 361.]

Mr. C. D. [*&c. the tenant or tenants in actual possession.*]

I am informed that you are in possession of, or claim title to the premises in this declaration of ejectment mentioned, or some part thereof; and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear in my stead, in next — term, [*or in London or Middlesex, "on the first day (or 'first four days') of next — term"*] in the Office of Pleas of her majesty's Court of Exchequer at Westminster, and then and there defend your title to the aforesaid premises, or to such part or parts thereof as is or are in your possession: otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this — day of —, 18—. Yours &c.

Richard Roe.

12. *Affidavit of Service of Declaration and Notice.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *John Doe*, on the demise [*or "several demises"*] of *L. P.*, [*Q. R., S. T. &c. naming all the lessors of the plaintiff severally*] (a) plaintiff,
 and
Richard Roe, defendant.

Of Service on Tenant (b).— *P. A.* of —, gentleman, maketh oath and saith, that he did, on the — day of — instant [*or "last"*], personally serve *C. D.* tenant in possession of [*part of*] the premises mentioned in the declaration of ejectment hereunto annexed (*annex it*), with a true copy of the said declaration, and of the notice thereunder written, and at the same time read over to the said *C. D.* the said notice, and ex-

(a) They should all be named, but the order in which they are named

is immaterial, 2 Chit. Ar. Pr. 743.

(b) See 2 Chit. Ar. Pr. 736, 743.

plained to him the intent and meaning of the said declaration and notice, and of the said service thereof.

Sworn [*&c. as ante, 207.*]

P. A.

Of Service on several Tenants on same day.] (a)—That he did, on the — day of — instant [*or “last”*], personally serve C. D. and E. F., tenants in possession, &c. [*as in last*] with the said declaration, and the notice thereunder written, by delivering a true copy of the said declaration and notice to each of the said C. D. and E. F. [*if the notice was not directed to all the tenants, say “except that the said notice was directed to each of them the said C. D. and E. F. separately”*]; and this deponent at the same time read over the said notice to each of them the said C. D. and E. F., and explained to them respectively the intent and meaning of the said declaration and notice, and of the said service thereof.

Of Service on several Tenants on different Days.—That he did, on the — day of — instant [*or “last”*], personally serve C. D. tenant in possession of part of the premises mentioned in the declaration of ejectment hereunto annexed (*annex it*), with a true copy of the said declaration and of the notice thereunder written, and at the same time read over to the said C. D. the said notice, and explained to him the intent and meaning of the said declaration and notice, and of the said service thereof. And this deponent further saith, that he did, on the — day of — instant [*or “last”*], personally serve E. F., tenant in possession of other part of the premises mentioned in the said declaration, with a true copy &c. [*as before*]: And this deponent further saith, that he did, on the — day of — instant [*or “last”*], personally serve G. H., tenant in possession of other part of and residue of the premises mentioned in the said declaration, with a true copy &c. [*as before*].

Of Service on Wife.] (a)—That he did, on the — day of — instant [*or “last”*], serve E. D. the wife of C. D., tenant in possession of [part of] the premises mentioned in the declaration of ejectment hereunto annexed (*annex it*), with a true copy of the said declaration and of the notice hereunder written, by delivering the same to the said E. D. upon the premises aforesaid [*or “at the dwelling-house and place of residence of the said C. D. situate in —”*]; and this deponent at the same time read over to the said E. D. the said notice, and explained to her the intent and meaning of the said declaration and notice, and of the said service thereof. [*If you have doubt as to the name of the wife, then omit her name and call her simply, “the wife of the said C. D.” or if you have any doubt as to the party being the tenant’s wife, then say, “E. D. who then represented herself as the wife of C. D.” or “the said C. D. and E. D. living together as man and wife.”*]

Of Service on one of Tenant’s Family.] (b)—That he did, on the — day of — instant, serve J. D. the son [*or “daughter,” or “a servant,” and if you cannot state the name of the party, omit it*] of the said C. D., the tenant in possession of [part of] the premises mentioned in the declaration of ejectment hereunto annexed (*annex it*), with a true copy of the said declaration and of the notice thereunder written, by delivering the same to the said son [*or “daughter” &c.*] upon the premises aforesaid; and this deponent at the same time read over to the said son [*or “daughter” &c.*] the said notice, and explained to him the intent and meaning of the said declaration and notice, and of the said service there-

(a) See 2 Chit. Ar. Pr. 736, 743.

(b) See 2 Chit. Ar. Pr. 739, 740, 744.

of. And this deponent further saith, that afterwards, on &c. — instant [or “last”], this deponent saw the said *C. D.* (*the tenant*) and conversed with him upon the subject of this action, when the said *C. D.* told this deponent that he had received the copy of the declaration and notice last aforesaid on [*a day before the first day of the term*].

[*If the service cannot be effected in either of the modes stated in the above affidavit, you must make the best service you can, and make an affidavit thereof, and then move the court why the service should not be deemed good service. See 2 Chit. Ar. Pr. 739.*]

Special Affidavit where Service was not made in the regular way.] (a)—*J. B.* of —, and *W. G.* of —, clerk to —, one of the plaintiff’s attornies in the above cause, severally make oath and say, and first this deponent *W. G.* for himself saith, that this action is brought on the several demises of the above-named lessors of the plaintiff to recover the possession of two messuages, gardens, land, and premises, with the appurtenances, which were demised by *J. J.* defendant, to the said *J. B.* lessor of plaintiff, for a term of years still subsisting, to secure the due payment by the said *J. J.* of an annuity of £50 per annum, for a term of ninety-five years, to be computed from the 18th day of September, *A. D.* 1817, if the said *J. D.*, *J. H.*, and *W. B.*, or either of them, should so long live (and which *J. D.*, *J. H.*, and *W. B.* are still living), unto the said *J. D.* by quarterly payments, and that the sum of £75 and upwards, at the time of the service of the declaration in ejectment hereafter mentioned, was in arrear and still is unpaid, and that the said lessor of the plaintiff, *J. B.*, then and still has, under and by virtue of the said demise, and of the deed securing the said annuity, good and sufficient right and power to enter on the said premises and to sustain this action of ejectment, as this deponent is advised and verily believes: And this deponent further saith, that the said *J. J.* the grantor of the said annuity, at the time of the grant of the said annuity, was in the actual possession and occupation of the said tenements and premises, with the appurtenances, sought to be recovered by the said action of ejectment, and had not at the time of the service of the said declaration in ejectment, as hereafter mentioned, let the same to any person or persons whatsoever, but the said *J. L.* then and still retains the same in his own possession, as this deponent is informed and verily believes. And this deponent further saith, that on the — day of — last he this deponent went to the said premises and found the said two houses and the outbuildings thereto belonging closely shut up, and that no person resided or was therein, nor was any person in the said premises save and except this deponent; and thereupon this deponent did on the said — day of — last past, before the hour of two in the afternoon, affix and leave copies of the declaration in ejectment hereto annexed and the notice thereunder written, upon the respective outer doors of the said two messuages in the said declaration mentioned, such doors being the most conspicuous part of the said dwelling-houses, and there being no person in possession of either of the said two messuages or dwelling-houses, or any part thereof: And this deponent further saith, that he this deponent did then and there search for and make every possible inquiry after the said *J. J.* the said tenant in possession of the said two respective messuages in the declaration of ejectment hereunto annexed mentioned, in order to serve him with the said declaration and notice, but could not find or discover the said *J. J.* so as to serve him personally with copies or a copy of the said declaration, or any declaration or pro-

(a) See 2 Chit. Ar. Pr. 739, 740, 744.

cess whatsoever, nor could this deponent ascertain that the said J. J. had any other residence or late residence in this kingdom: And this deponent further saith, that he this deponent is informed and verily believes, that he the said J. J. hath absconded and left this country greatly in debt to several of his creditors, and is now resident in France, and hath deserted the said two messuages and premises respectively: And this deponent further saith, that he did, on the same day and year aforesaid, also serve D. D. of G. in —, gent. who then acted, and this deponent believes still acts, as attorney for the said J. J., with a true copy of the said declaration and of the notice thereunder written and hereto annexed, by delivering the same to the clerk of the said D. D. at his office at G. aforesaid, the said D. D. being then absent for the day, and the said deponent at the same time explained to the said clerk the intent and meaning of such service: And this deponent the said J. B. for himself saith, that J. D. the son of the said D. D. called at the office of this deponent the — day of — instant, and informed this deponent that his father the said D. D. had duly received the said declaration in ejectment so served on the said clerk as aforesaid, and which information this deponent verily believes to be true.

Sworn [&c. *see ante*, 207.]

13. *Rule to show cause why the Service should not be deemed good Service.*

On — the — day of —, in the year of our Lord —.
John Doe Upon reading the affidavit of P. A. and the
 on the demise [or declaration in ejectment and notice thereunder
 "several demises"] written, thereunto annexed, it is ordered that
 of L. P. [and others] C. D. tenant in possession of part of the pre-
 mises in question, upon notice of this rule to be
 given to him, shall upon — show cause why
Richard Roe. the delivering of the copy of the said declaration and notice to a son [or
 "daughter," or "servant"] of the said C. D. upon the said premises,
 should not be deemed as good service thereof as if he the said C. D. were
 personally served therewith. And it is further ordered, that leaving a
 copy of this rule for the said C. D. with some person residing at his
 dwelling-house, or, in case no person can be met with, affixing a true
 copy thereof on the outer door of the said dwelling-house, shall be deemed
 good service of this rule upon the said C. D. Upon the motion of
 Mr. —.

By the Court.

[*See 2 Chit. Ar. Pr.* 746.]

14. *Affidavit of Service of the above Rule.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *John Doe*, on the demise [or "several demises"]
 of L. P. [Q. R., S. T. &c. *naming all the lessors*
of the plaintiff severally (a)], plaintiff,
 and

Richard Roe, defendant.

P. A. of —, maketh and saith, that he did, on — last [or
 "instant"], serve C. D. tenant in possession of [part of] the premises in
 question in this cause with a true copy of the rule hereunto annexed,
 (*annex it*), by leaving the same for him with a son [or "daughter," or

(a) See note (a), *ante*, 362.

"servant"] of the said C. D. then residing at the dwelling-house of the said C. D. situate in — [or otherwise state the service of the rule as allowed by such rule.]

Sworn [&c. ante, 207.]

[See 2 Chit. Ar. Pr. 746.]

15. *Rule for Judgment against Casual Ejector, in Q. B. or Exch.*

On the — day of —, A. D. —.

John Doe
on the demise [or
"several demises"] of
L. P. [and others]
against
Richard Roe.

Unless the tenant in possession of the premises in question shall appear and plead to issue on —, let judgment be entered for the plaintiff against the now defendant Richard Roe, by default. Upon the motion of Mr. —.

By the Court.

[See 2 Chit. Ar. Pr. 745.]

16. *The like, as to Part of Premises.*

[Same title and heading as in preceding form.] Unless C. D., tenant in possession of part of the premises in question, shall appear and plead to issue on [Saturday next after the end of the term], let judgment be entered for the plaintiff against the now defendant, Richard Roe, by default; but execution shall issue for such part of the premises only as is in his possession. Upon the motion of Mr. —.

By the Court.

17. *The like, where several Tenants.*

[Same title and heading as in form, supra, No. 15.] Unless C. D. and E. F., tenants in possession of part of the premises in question, [and unless — or some other person claiming title to such parts of the said premises as are untenanted,] shall appear and plead to issue on —, let judgment be entered for the plaintiff against the now defendant, Richard Roe, by default; but execution shall issue for such parts of the premises only as are in their respective possessions, and such other parts as are untenanted.] Upon the motion of Mr. —.

By the Court.

18. *The like, in C. P.*

[Same title and heading as in form, supra, No. 15.] Upon reading the affidavit of P. A. and the declaration in ejectment and notice thereunder written, thereunto annexed, it is ordered, that unless C. D., tenant in possession of the tenements in question, or some other person concerned in the title thereof, on —, shall appear by an attorney of this court, who shall then forthwith receive a declaration and plead thereto the general issue, and consent to the common rule for confessing lease, entry, and ouster upon the trial to be had, judgment be entered against the casual ejector. And in the meantime proceedings are to stay. Upon the motion of Mr. — for the plaintiff.

By the Court.

19. *Præcipe for Appearance of Casual Ejector in Ejectment by Original, where no Appearance by Tenant or Landlord.*

—— (to wit.) Appearance for *Richard Roe* at the suit of *John Doe*, on the demise [or “demises”] of *L. P.* [and others.]

P. A. plaintiff’s attorney,
——, 1840.

If the ejectment be by bill in Q. B. common bail must be filed. See form, post, 371.

[See 2 Chit. Ar. Pr. 746.]

20. *Judgment against Casual Ejector in Q. B. by Original.*

As yet of —— term, (term of the judgment,) in the —— year of the reign of Victoria. Witness (name of the chief justice.)

(a) —— (to wit): *Richard Roe* was attached to answer [&c. copy the declaration to the end, omitting the notice, and then proceed on a new line continuing the entry thus:] And on the —— day of ——, A. D. ——, the said *Richard Roe*, in his proper person, comes and defends the force and injury when &c., and says nothing in bar or preclusion of the said action of the said *John Doe*, whereby the said *John Doe* remains therein undefended against the said *Richard Roe*. Therefore it is considered that the said *John Doe* do recover of the said *Richard Roe* his said term [or “terms”] yet to come of and in the respective tenements aforesaid with the appurtenances, and also his damages by him sustained on occasion of the trespass and ejectment [or “trespasses and ejectments”] aforesaid. And hereupon the said *John Doe* freely here in court remits unto the said *Richard Roe* all the damages, costs and charges by him sustained on occasion of the trespass and ejectment [or “trespasses and ejectments”] aforesaid; therefore let the said *Richard Roe* be acquitted of the said damages &c., and go thereof without day &c. And upon this the said *John Doe* prays the writ of our lady the queen, to be directed to the sheriff of ——, commanding him that he cause the said *John Doe* to have possession of his term [or “terms”] aforesaid with the appurtenances; and it is granted to him, returnable before our said lady the queen on —— (b), wheresoever &c.

[See 2 Chit. Ar. Pr. 745.]

21. *The like, in C. P.*

In the Common Pleas.

As yet of —— term, —— Victoria, (term of the judgment.)

—— (to wit): *Richard Roe* was attached to answer [&c. copy the de-

(a) Notwithstanding the rule of H. T. 4 Will. 4, the entry of the warrants of attorney has been sometimes continued in ejectment. It would seem, however, that they are unnecessary, that rule prohibiting the insertion of them in any roll whatever. The following is the form of them:—

“ —— (to wit: *John Doe*, on the demise [or “demises”] of *L. P.* [and *E. F.*] puts in his place *P. A.* his

attorney, against *Richard Roe*, in a plea of trespass and ejectment.”

“ —— (to wit): *Richard Roe* in person, at the suit of the said *John Doe*, in the plea aforesaid.”

(b) It is questionable whether it can be made returnable immediately after the execution thereof; this being an ejectment. In practice, however, it is frequently made so returnable.

claration to the end, and then on a new line proceed as directed in the preceding form, except in making the writ of possession "returnable here on —.""]

22. *The like, in Exchequer.*

[Copy the declaration and averment of pledges, omit the notice, and proceed on a new line thus:]

And on — the said *Richard Roe*, in his proper person, comes and defends the force and injury when &c., and the said *John Doe* prays that the said *Richard Roe* may answer him in the premises; and upon this the said *Richard Roe* says nothing in bar or preclusion &c. [proceed as in preceding form in *Q. B.*, making however the writ of possession "returnable here on —."] (

23. *The like, in Q. B. by Bill of a different Term, with an Impar lance (a).*

[Commence as in the form in *Q. B.* by original, ante, 367.] — (to wit.) Be it remembered, that in — term last past, before our lady the queen at Westminster, came *John Doe* by *P. A.* his attorney, and brought into the court of our said lady the queen before the queen herself then there, his certain bill against *Richard Roe*, being in the custody of the marshal of the marshalsea of our said lady the queen before the queen herself, of a plea of trespass and ejectment of farm; and there are pledges for the prosecution thereof, to wit, *John Den* and *Richard Fen*; which said bill follows in these words, that is to say: — (to wit) *John Doe* complains of *Richard Roe*, being in the custody &c. [copy the declaration, omitting pledges and notice, and proceed on a new line thus:] And now at this day, that is to say, on —, in this same term, until which day the said *Richard Roe* had leave to imparl to the said bill, and then to answer the same &c. before our said lady the queen at Westminster come as well the said *John Doe*, by his attorney aforesaid, as the said *Richard Roe*, in his proper person; and on — the said *Richard Roe* defends the force and injury when &c. and says nothing in bar or preclusion [&c. conclude as in the form in *Q. B.* by original, ante, 367, except in making the writ of possession returnable "before our said lady the queen at Westminster, on —," and leaving out the words "wheresoever" &c.]

24. *Execution against Casual Ejector.*

[The forms of writs of execution by *habere facias possessionem* against the casual ejector, are the same as in other cases, post, 390, 391, but substituting "*Richard Roe*" for the name of the tenant.]

(a) It seems that, notwithstanding the recent rules of H. T. 4 Will. 4, the impar lance &c. should be entered,

as those rules are not in general applicable to ejectments.

25. Consent Rule by Tenant or Landlord, in Q. B. or Exchequer.

In the Queen's Bench [or "Exchequer."]

— term, in the — year of the reign of Queen Victoria.

John Doe
on the demise [or
"demises"] of
L. P. [and others]
against
Richard Roe.

It is ordered, by the consent of the attornies of both parties, that *C. D.* be made defendant in the stead of the now defendant *Richard Roe*, and do forthwith appear at the suit of the plaintiff, [if in *Q. B. by bill, or in Exchequer, here add "and file common bail,"*] and receive a declaration in an action of trespass and ejectment for [part of] the premises in question, which said [part of the said] premises he the said *C. D.* hereby admits to be or consist of — messuages, [&c. *If you defend for the whole of the premises, then here set them forth as in the declaration; and if the declaration contain two or more demises, repeat the premises over again accordingly. If you defend only for part, then specify the part, and in cases of difficulty get the consent rule drawn by your counsel or special pleader,*] with the appurtenances, situate in the parish of —, in the county of —, (as in the declaration,) and now in the possession or occupation of the said *C. D.* [or if by a landlord, "of —, his tenant,"] for which he intends as tenant [or "landlord"] thereof to defend this action of trespass and ejectment. And it is further ordered, by the like consent, that the said *C. D.* do forthwith plead not guilty thereto; and upon the trial of the issue confess lease, entry and ouster, and that the said *C. D.* [or if by landlord, say, "that his said tenant"] was, at the time of the service of the said declaration, in possession of the premises hereinbefore mentioned and specified, and insist upon the title only; otherwise let judgment be entered for the plaintiff against the now defendant, *Richard Roe*, by default. And if upon the trial of the said issue the said *C. D.* shall not confess lease, entry, and ouster, and such possession as aforesaid, whereby the plaintiff shall not be able further to prosecute his suit herein against the said *C. D.*, then no costs shall be allowed for not further prosecuting the same, but the said *C. D.* shall pay costs to the plaintiff in that case to be taxed by the master. And it is further ordered, that if, upon the trial of the said issue, a verdict shall be given for the said *C. D.*, or it shall happen that the plaintiff shall not further prosecute his said suit for any other cause than for not confessing lease, entry, ouster, and such possession as aforesaid, then the lessor of the plaintiff shall pay the said *C. D.* his costs in that case to be adjudged.

P. A. attorney for the plaintiff.

D. A. attorney for the defendant.

[See 2 Chit. Ar. Pr. 750. The master, in drawing up the rule, prefixes the day of marking it and, instead of the attornies' names at the end, adds "By the Court."]

26. The like, in C. P.

In the Common Pleas.

— term, in the — year of the reign of Queen Victoria.

[Same title as in the preceding form.] It is ordered by the consent of *P. A.*, attorney for the plaintiff's lessor, and *D. A.*, attorney for *C. D.* who claims title to [part of] the premises in question, which said [part of the said] premises the said *C. D.* hereby admits to be or consist of — messuages, [&c. as in preceding form,] with the appurtenances,

situate in —, and now in the possession and occupation of the said *C. D.* [or if by a landlord, say "of —, his tenant,"] for which he intends as tenant [or "landlord"] thereof to defend this action of trespass and ejectment, that he may be admitted defendant, and that the said *C. D.* shall immediately appear by his said attorney, who shall receive a declaration and plead thereto the general issue this term, and at the trial thereupon to be had the said *C. D.* shall appear in his own proper person, or by counsel or attorney, and confess lease, entry, and ouster, and that he [or "his said tenant"] was, at the time of the service of the declaration, in possession of the premises hereinbefore mentioned and specified, and insist upon the title only; otherwise let judgment be entered for the plaintiff against the now defendant by default. And by the like consent it is further ordered, that if, upon the trial of the said issue, the said *C. D.* shall not confess lease, entry, and ouster, and such possession as aforesaid, whereby the plaintiff shall not be able further to prosecute this action against the said *C. D.*, then no costs shall be allowed for not further prosecuting the same, but the said *C. D.* shall pay costs to the plaintiff's lessor in that case to be taxed by the prothonotary. And it is further ordered, by the like consent, that if, upon the trial of the said issue, a verdict shall be found for the said *C. D.*, or it shall happen that the plaintiff shall not further prosecute his said action for any other cause than for not confessing lease, entry, and ouster, and such possession as aforesaid, then the lessor of the plaintiff shall pay the said *C. D.* costs in that case to be adjudged.

27. *Rule in Q. B. or Exch. for admitting Landlord to defend.*

— term, in the — year of the reign of Queen Victoria.

[*Same title as in form, ante, 369.*] It is ordered, that *L. L.*, landlord of the tenant in possession of [or "part of"] the premises in question in this cause, shall be joined and made defendant with the said tenant, if he shall appear; and the said *L. L.* desiring, if the said tenant shall not appear, that he may appear by himself, and consenting that in such case he will enter into the common rule, to confess lease, entry, ouster, and possession, in such manner as the said tenant ought in case he had appeared, leave is given to the said *L. L.* pursuant to the statute and rule of court in that case made and provided, (if the said tenant shall not appear,) to appear by himself, and upon his entering into such common rule to become defendant in the stead of the casual ejector; and to defend his title to the said premises without the said tenant. The plaintiff nevertheless is at liberty to sign judgment against the casual ejector; but execution thereon is stayed until this court shall further order. Upon the motion of Mr. —.

By the Court.

[*See 2 Chit. Ar. Pr. 753.*]

28. *The like, in C. P.*

In the Common Pleas.

— term, — Victoria.

[*Same title as in form, ante, 369.*] It is ordered, that *L. L.*, landlord of [part of] the premises in question, be joined and made defendant together with *C. D.* tenant in possession of the premises in question, in the common rule by consent in ejectment, instead of the casual ejector,

in case the said *C. D.* shall appear, [*or, if for part, "shall appear and defend his title as to — messuages, &c. (see ante, 369,) part of the premises in question only:"*] And it is further ordered, that in case the said *C. D.* shall neglect to appear, the said *L. L.* may appear by himself, and defend his title to the premises, [*or, "to — messuages (&c.) part of the premises,"*] in question, pursuant to the statute in that case made and provided; he hereby consenting to enter into the like rule, that the said *C. D.* by the course of the court, in case he had appeared, ought to have done: Nevertheless, the plaintiff shall be at liberty to sign judgment against the casual ejector; but execution is hereby stayed until the court shall make further order therein: And by consent of counsel for the said *L. L.* it is further ordered, that the said *L. L.*, upon the trial to be had, shall admit himself to be in the actual possession of the said premises. On the motion of Mr. —, for the said *L. L.*

By the Court.

29. *Præcipe for Appearance (a).*

— to wit. Appearance for *C. D.* and *L. L.* at the suit of *John Doe*, on the demise [*or "demises"*] of *L. P.* [*and others.*]

D. A. defendant's attorney.

—, 1840.

30. *Bail-Piece in Q. B.*

In the *Q. B.*

— term, — Victoria.

— to wit. *Richard Roe* [*or "C. D."*] having been served with process, is delivered to bail to *John Den* of London, yeoman, and *Richard Fen* of the same place, yeoman, at the suit of *John Doe*.

D. A. attorney.

[*If filed by plaintiff. here add, "Filed according to the statute,"*]
— January, 1840.

[*See 2 Chit. Ar. Pr. 750.*]

31. *Plea.*

In the *Q. B.* [*or "C. P." or "Exch. of Pleas."*]

— term, — Victoria (*b*).

C. D.
ats.
Doe
on the demise [*or "demises"*] of *L. P.* } And the defendant, by *D. A.* his attorney, says that he is not guilty of the supposed trespass and ejectment [*or "trespasses and ejectments"*] above laid to his charge, [*or if several ousters, say "or any or either of them, or any part thereof,"*] in manner and form as the said *John Doe* hath above thereof complained against him: And of this the defendant puts himself upon the country, &c.

[*See 2 Chit. Ar. Pr. 749.*]

(a) An appearance need not be entered in *Q. B.* by original, or in *C. P.* or *Exch.* previously to signing judgment against the casual ejector. See

2 Chit. Ar. Pr. 746.

(b) The rules of *H. T. 4 Will. 4*, as to the title of the plea, &c. are not, it seems, applicable to ejectments.

32. *Cognovit, in Ejectment.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *John Doe* on the demise [*or "demises"*]
of *L. P.* [and others] plaintiff,
and

Joseph Styles, defendant.

I confess this action, and that the said *John Doe* is entitled to recover his term [*or "terms"*] yet to come of and in — messages (&c. as in the declaration, or part of them), with the appurtenances, situate in —, in the county of —, [part of] the tenements mentioned in the declaration in this cause; and also that the said *John Doe* hath sustained damage by reason of the trespass and ejectment [*or "trespasses and ejectments"*] in the said declaration mentioned. to one shilling, besides his costs of suit in this behalf to £—, [*or "to be taxed by one of the masters."* If the defendant confesses mesne profits, proceed thus: "And also that the said *John Doe* hath sustained damage to £— for the mesne profits of the [said parcel of the] premises aforesaid, which have or might have accrued or shall or may accrue, from the — day of —, (the day of the demise in the declaration,) down to the — day of — next." And in case I shall make default in delivering up possession of the [said parcel of the] premises aforesaid, or in the payment of the said sum of £— for damages and costs as aforesaid, [*or "for damages as aforesaid, together with the costs to be taxed as aforesaid,"*] on the — day of — next, then the said *John Doe* shall be at liberty to enter up judgment for his term [*or "terms"*] of and in the [said parcel of the] premises aforesaid, and for his said damages and costs above acknowledged, as also for the costs of entering up such judgment and of suing out execution, and that he shall also be at liberty thereupon forthwith to sue out execution for the same, together with sheriff's poundage, costs of levy, and all other incidental expenses. And I do hereby agree, [*if defendant have pleaded, say "to withdraw the plea by me pleaded in this action, and"*] not to bring any writ of error, or file any bill in equity, and that it shall not in any case be necessary to revive the judgment entered upon this cognovit, either by scire facias or otherwise, notwithstanding execution thereon may not have issued within a year after the signing thereof. Dated the — day of —, A. D. 1840.

Witness *W. W.*

C. D.

[See 2 Chit. Ar. Pr. 753.]

33. *Judgment for Plaintiff on Cognovit after Issue joined.*

[State the term as usual, see ante, 367, No. 20, and copy the issue to the end of the award of venire facias, and then proceed thus:] At which day come here the parties aforesaid, by their attornies aforesaid; and hereupon the said *C. D.*, relinquishing his said plea by him above pleaded, says that he cannot deny the action of the said *John Doe*, nor but he the said *C. D.* is guilty of the trespass and ejectment [*or "trespasses and ejectments"*] above laid to his charge, in manner and form as the said *John Doe* hath above thereof complained against him; and he confesses and admits that the said *John Doe* hath sustained damages by reason of the said trespass and ejectment, [*or "trespasses and ejectments,"*] to the sum of £—, besides his costs and charges by him about his suit in this

behalf expended : And hereupon the said *John Doe* freely here in court remits to the said *C. D.* the residue of the damages in the said declaration mentioned ; and he prays judgment, and his term [or "terms"] yet to come of and in the [respective] tenements aforesaid, with the appurtenances, together with his said damages so confessed, and his costs and charges aforesaid, to be adjudged to him &c. Therefore it is considered that the said *John Doe* do recover against the said *C. D.* his said term [or "terms"] yet to come of and in the [respective] tenements aforesaid, with the appurtenances, together with the damages aforesaid, to the said sum of £——, in form aforesaid confessed, and also £—— for his said costs and charges, by the court here adjudged to the said *John Doe*, and with his assent ; which said damages, costs and charges in the whole amount to £——. And hereupon the said *John Doe* prays the writ of our said lady the queen, to be directed to the sheriff of —— aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances, and it is granted to him, returnable before our said lady the queen, on ——, wheresoever &c. [or in the *C. P.* or *Exch.* "returnable here on ——," or in *Q. B.* by bill, "returnable before our lady the queen at Westminster on ——" (a).

34. *The like, where the Cognovit is only for Part of the Premises, and Defendant confesses Mesne Profits.*

[State the term as usual, see ante, 367, No. 20, and copy the issue to the end of award of venire facias, and then, on a new line, thus:] At which day come here the parties aforesaid, by their attornies aforesaid ; and the said *C. D.* as to [one messuage and one yard] with the appurtenances, parcel of the tenements mentioned in the said declaration, relinquishing his plea by him above pleaded, says that he cannot deny the action of the said *John Doe*, nor but that he the said *C. D.* is guilty of the trespass and ejectment above laid to his charge, in manner and form as the said *John Doe* hath above thereof complained against him ; nor but that the said *John Doe* hath sustained damage by reason thereof to one shilling, besides his costs and charges by him about his suit in this behalf expended ; nor but that the said *John Doe* hath also sustained further damage to £——, for the mesne profits of the said parcel of the premises aforesaid, which have or might have accrued, from the —— day of —— (the day of the demise in the declaration) down to the —— day of —— last. And hereupon the said *John Doe* saith that he will not further prosecute his suit against the said *C. D.* for the trespass and ejectment [or "trespasses and ejectments"] aforesaid in the residue of the tenements aforesaid ; and he prays judgment, and his term yet to come of and in the said [one messuage and one yard], with the appurtenances, parcel &c. and his damages so acknowledged, together with his costs and charges by him about his suit in this behalf expended, to be adjudged to him &c. Therefore it is considered that the said *John Doe* do recover of the said *C. D.* his said term of and in the said [one messuage and one yard], with the appurtenances, parcel &c., and also his damages aforesaid to £——, in form aforesaid acknowledged, and also £—— for his said costs and charges by the court here adjudged to the said *John Doe*, and with his assent ; which said damages, costs and charges, in the whole amount to £—— ; and let the said *C. D.* be acquitted of the trespass and ejectment

(a) As to the return of the writ of execution see ante, 367.

[or "trespasses and ejectments"] aforesaid in the residue of the tenements aforesaid, and go thereof without day. And upon this the said *John Doe* prays the writ of our lady the queen, to be directed to the sheriff of —, commanding that he cause the said *John Doe* to have possession of his said term of and in the said [one messuage and one yard], with the appurtenances, parcel &c.: and it is granted to him, returnable before [&c. conclude as in the preceding form.]

[See 2 Chit. Ar. Pr. 753.]

35. Execution thereon.

[Same as in other cases, see the forms, post, 390, &c.]

36. Warrant of Attorney, to confess Judgment in Ejectment.

[The heading and commencement is the same as in the form, ante, 323, No. 1.] These are to desire and authorize you, the attornies above named, or any one of you, or any other attorney of the Court of Queen's Bench [or "Common Pleas, or "Exch. of Pleas"] aforesaid, to appear for me *C. D.* in the said court, as of this present — term, or of any other subsequent term, and then and there to receive a declaration for me in an action of trespass and ejectment of farm, at the suit of *John Doe* on the demise [or "demises"] of *L. P.* for — messuages [&c. as ante, 369, No. 24], with the appurtenances, situate in the parish of —, in the county of —, which the said *L. P.* on the — day of —, A. D. —, had demised to the said *John Doe*, for the term of — years from thence next ensuing, and fully to be complete and ended, and thereupon to confess the same action, or else to suffer judgment by nil dicit or otherwise to pass against me in the same action, and to be thereupon forthwith entered up against me of record in the said court, for the recovery of the said term yet to come of and in the said tenements with the appurtenances, and also for the recovery of £— damages, besides costs of suit: And I the said *C. D.* do hereby further authorize [&c. conclude as usual, see form, ante, 323, No. 1.]

[The judgment and execution in this case are the same as on a cognovit, as ante, 372, 373.]

37. Order for Particulars.

D. } Upon hearing the attornies or
ats. } agents on both sides, [and by con-
Doe, on the demise [or "demises"] } sent,] I do order that the plaintiff
of *L. P.* [and others]. } do deliver to the defendant's at-
torney, the particulars of the premises for which this ejectment is brought:
and in the meantime all further proceedings in this cause be stayed.
Dated this — day of —, 1840.

[Judge's signature.]

[See 2 Chit. Ar. Pr. 754.]

38. Particulars of Premises.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

John Doe on the demise of *L. P.* &c.

This ejectment is brought to recover — messuages [&c. stating the premises with a degree of accuracy calculated to inform defendant of the

real premises sought to be recovered], with the appurtenances, situate in the parish of —, in the county of —. Dated this — day of — 1840.

To Mr. D. A.
Defendant's attorney.

Yours &c.
P. A. plaintiff's attorney.

39. Particulars of Breaches on a Forfeiture.

[*Same title and heading as in the preceding form.*] This action is founded on a lease, dated &c., made between the above-named L. P. (*lessor of the plaintiff*), of the one part, and C. D. of the other part [*or as the case may be*]; whereby the said L. P. demised to the said C. D. the premises for the recovery of which this ejectment is brought: to hold the same to the said C. D. from the — day of — then last [*or "next"*] for the term of — years then next ensuing, at the yearly rent of £—, payable quarterly &c. (*see the lease*); in which said lease the said C. D. covenants for the payment of the said rent at the times and in manner aforesaid; and also that the said C. D. shall and will repair &c.] *stating the covenant for repairs and the other covenants, for the breach of which you have brought the ejectment, as in the lease*; with a proviso of re-entry for non-payment of the said rent, and non-performance of the said covenants.

The following are the breaches of covenant by which the defendant has forfeited the said lease, and in respect of which this ejectment is brought, viz.:—The non-payment of the sum of £— for — quarters' rent, due on the — day of — last; the not repairing [*&c. as in the covenant for repairs, but specifying the non-repairs with a sufficient particularity to inform the defendant of them.*] Dated this — day of —, 1840.

To Mr. D. A.
defendant's attorney [*or "agent."*]

Yours &c.
P. A. plaintiff's attorney
[*or "agent."*]

[*See 2 Chit. Ar. Pr. 754.*]

40. Rule for staying Proceedings, on Payment of Rent and Costs, in Q. B. or Exchequer.

On — the — day of —, A.D. —.

Doe on the demise of L. P. v. Roe.

Upon reading the affidavit of the defendant, it is ordered, upon the said defendant's forthwith bringing into court the whole rent due and in arrear, and such sum to answer the costs as the master shall direct, that further proceedings in this cause be stayed: And it is referred to the master to compute the said arrears of rent, and to tax the said costs; and upon the said defendant's paying the said lessor of the plaintiff, or in case he shall refuse to accept the same, paying into court what the said master shall find due and allow for the said rent and costs, that all further proceedings therein, as to the non-payment of the said rent, be stayed: But it is further ordered, if the said lessor of the plaintiff has any other title to the premises in question, than for the non-payment of the said rent, he is at liberty to proceed. Upon the motion of Mr. —.

By the Court.

[*See 2 Chit. Ar. Pr. 754.*]

41. *The like, in C. P.*

[*Same heading and title as in last.*] Upon reading the affidavit of D.A. it is ordered, that the lessor of the plaintiff, upon notice [*&c. as ante*, 342, No. 2] show cause why, upon the defendant's bringing into this court all the rent and arrears due to the lessor of the plaintiff, together with the plaintiff's costs in this action, it should not be referred to one of the masters to settle and tax the sum due for such rent and arrears, and costs; and why, upon payment thereof, all further proceedings in this action should not be stayed. Upon the motion of Mr. ——. [*In the rule absolute add*, "But in default of the defendant's bringing the said rent and costs into court, within the time aforesaid, the said former rule of the — day of —, be discharged."] By the Court.

42. *The like, on Payment of Mortgage Money, &c. in C. P.*

[*Same title, heading, and commencement, as in last.*] Show cause why, upon the defendant's bringing into this court the principal money and interest due to the lessor of the plaintiff upon his mortgage, and also such costs as have been expended in any suit or suits at law or equity upon such mortgage, his costs in this cause to be ascertained, computed, and taxed by one of the masters, the money so brought into this court should not be deemed and taken to be in full satisfaction and discharge of such mortgage; and upon payment thereof to the lessor of the plaintiff, why all proceedings in this action should not be stayed; and why the mortgaged premises, and the lessor of the plaintiff's estate and interest therein, should not be assigned and conveyed, at the costs and charges of the defendant, to such persons as he shall appoint; and why all deeds, evidences and writings, in the custody or power of the lessor of the plaintiff, relating to the title of such mortgaged premises, should not be delivered up to the defendant, or to such person or persons as he shall for that purpose nominate and appoint. Upon the motion of Mr. ——. By the Court.

[*See 2 Chit. Ar. Pr. 755.*]

43. *Rule for staying Proceedings till Guardian appointed for an Infant Lessor, to answer Costs.*

[*Same heading, title, and commencement, as in the preceding forms.*] Show cause why further proceedings in this action should not be stayed, until a sufficient guardian be appointed for the lessor of the plaintiff, who will undertake to pay to the defendant such costs as may happen to be adjudged to him; [*or in C. P. say* "until some person on behalf of the lessor of the plaintiff give security for payment of the defendant's costs, in case of a nonsuit or verdict for the defendant;"] and that in the meantime further proceedings be stayed, the lessor of the plaintiff being an infant. Upon the motion of Mr. ——. By the Court.

44. *The like, till Security be given for Costs.*

[*Same heading, title, and commencement, as in preceding forms.*] Show cause why further proceedings in this action should not be stayed, until he shall have given such security for the costs in this cause, in case the plaintiff shall be nonsuited, or a verdict shall be given for the said de-

fendant, as the master [or in C. P. "prothonotary"] shall approve of; and that in the meantime further proceedings be stayed. Upon the motion of Mr. ——. By the Court.

[See 2 Chit. Ar. Pr. 754, and see other forms post.]

45. *Affidavit to ground Motion for the Name of one of Lessors of Plaintiff to be struck out of Declaration, on the ground that he did not consent to its Insertion.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Doe, on the several demises of L. P. and J. D., plaintiff,

v.

Roe, defendant.

L. P. of —, one of the persons named in the declaration in ejectment in this cause as one of the lessors of the plaintiff, maketh oath and saith, that he hath seen the said declaration which he hath been informed and verily believes was served on T. T., and a copy whereof is hereunto annexed: And this deponent further saith, that he never hath authorized Mr. P. A., who appears by the indorsement on the declaration to be the attorney for the plaintiff in this cause, or Messrs. A. and C. his agents, or any other person or persons whatsoever, to make use of his name as a lessor of the plaintiff John Doe, either separately or jointly with any other person or persons whatsoever in the said declaration mentioned, or otherwise or in any other manner authorized the commencement or prosecution of any action of ejectment for the recovery of the premises in question in this cause, and that the said T. T. is entitled to occupy the same as this deponent's tenant, and this deponent is desirous that he should continue such tenant, and never hath concurred in any manner in the commencement or prosecution of this action, which hath been commenced against this deponent's will: And this deponent further saith, that no indemnity whatever hath been offered to him against the costs of this action.

Sworn, [&c. see ante, 207.]

L. P.

[See 2 Chit. Ar. Pr. 756.]

46. *Consolidating Ejectments.*

[See 2 Chit. Ar. Pr. 756, and the forms, post.]

47. *Judgment of Non-pros, for not replying in Q. B. by Original.*

As yet of — term, in the — year of the reign of Queen Victoria. Witness (name of chief justice). (a)

— (to wit.) C. D. was attached to answer unto John Doe &c. (copy declaration, substituting the name of the real defendant for that of the casual ejector Richard Roe, and omit the notice; then copy to the end of defendant's plea, and then thus:] And upon this the said C. D. prays that the said John Doe may reply to the aforesaid plea of the said C. D.; and thereupon a day is given by the court here, to the said John Doe, before our lady the queen, until —, wheresoever &c. that is to say, for the said John Doe to reply to the aforesaid plea of the said C. D.: the same day is given to the said C. D. at the same place: At which day, before

(a) As to the entry of warrants of attorney, &c. see ante, 367.

our said lady the queen at Westminster, comes the said C. D. by his attorney aforesaid; and the said John Doe, although at that day solemnly called, comes not, nor hath he replied to the aforesaid plea of the said C. D., nor doth he further prosecute his said writ: Therefore it is considered by the court here, that the said John Doe take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c.; and that the said C. D. do go thereof without day &c.

[See 2 Chit. Ar. Pr. 751, and see other forms, post.]

48. Issue, by Original, in Q. B. or C. P. (a)

In the Queen's Bench [or "Common Pleas."]

— term (the term of which issue was joined), in the
— year of the reign of Queen Victoria.

— (to wit.) C. D. was attached to answer John Doe &c. [copy the declaration to the end, but substitute the name of the real defendant for that of Richard Roe, the casual ejector, and omit the notice; and then proceed, on a new line, thus:]

And the said C. D. by D. A. his attorney, comes and defends the force and injury when &c., and says that [here copy the plea, and proceed thus:] and the said John Doe doth the like [if there be more than one plea, each must be copied accordingly, and the similiter added to each.] Therefore the sheriff is commanded, that he cause to come before our lady the queen, on —, wheresoever our said lady the queen shall then be in England, [or in C. P. "that he cause to come here, on —,"] twelve, &c., by whom &c., and who neither &c., to recognize &c., because as well &c. [and in Q. B. add, "the same day is given to the parties aforesaid &c."]

[See 2 Chit. Ar. Pr. 756, 757.]

49. Issue in Q. B. by Bill (a).

In the Queen's Bench.

— term (the term of which issue was joined), in the
— year of the reign of Queen Victoria.

Ellenborough.

— (to wit.) Be it remembered, that on the — day of —, in — term last past (the first day of the term of which the declaration is entitled; or if entitled specially, according to the 11 Geo. 4 & 1 Will. 4. c. 70, s. 37, then the day of which it is entitled), before our lady the queen at Westminster, comes John Doe by P. A. his attorney, and brings into the court of our said lady the queen, before the queen herself, his certain bill against C. D., being in the custody of the marshal of the marshalsea of our said lady the queen, before the queen herself, of a plea of trespass and ejectment of farm, and there are pledges for the prosecution thereof, to wit, John Den and Richard Fen; which said bill follows in these words, that is to say; —, to wit, John Doe complains of C. D. [&c. copy the declaration to the end, substituting the name of the real defendant for that of Richard Roe, and omit the notice; then copy the plea in a separate paragraph, and add the similiter to the plea, thus: "And the said J. D. doth the like;" and then conclude the issue with an award of the venire in continuation of the last pleading, thus:] Therefore let a jury thereupon come before our sovereign lady the queen at Westminster, on

(a) The rule of H. T. 4 W. 4, as to the form of the issue, is not applicable to an ejectment.

the — day of —, by whom &c., and who neither &c., to recognize &c., because as well &c., the same day is given to the parties aforesaid &c.

[*See 2 Chit. Ar. Pr. 756, 757.*]

50. Issue in Exchequer, and the like, where the Issue is or is not of a Term subsequent to Declaration, with an Imparlance.

Pleas before the barons of the Exchequer at Westminster, among the pleas of the term of — (*the term of which issue was joined*), in the — year of the reign of our sovereign lady Victoria, and in the year of our Lord 1840.

— (to wit.) Be it remembered, that heretofore, that is to say, in — term last past, *John Doe*, debtor of her present majesty, came before the barons of her Exchequer at Westminster, by *P. A.* his attorney, and brought then here into court his certain bill against *C. D.*, of a plea of trespass and ejectment of farm; the tenor of which said bill follows in these words, to wit: [*Here copy the declaration to the end, substituting the name of the real defendant for that of the casual ejector, Richard Roe, and omit the notice, adding the pledges, and proceed on a new line as follows:*] And now here at this day, that is to say, on — in this same term, until which day the said *C. D.* had leave to imparl^(a) to the said bill, and then to answer the same, come as well the said *John Doe* by his attorney aforesaid, as the said *C. D.* by *D. A.* his attorney; and the said *John Doe* prays that the said *C. D.* may answer him in the premises; and upon this the said *C. D.* defends the force and injury when &c., and says [*&c. here copy the pleadings and similiter, and conclude thus:*] Therefore to try the issue [*or "issues"*] aforesaid between the parties aforesaid above joined, let a jury be made thereof; and the sheriff of — is commanded that he cause to come here on — twelve &c., by whom &c., who neither &c., to recognize &c., because as well &c., the same day is given to the parties aforesaid here &c.

[*Where the issue is of the same term with the declaration, it merely contains a transcript of the pleadings, after the placita, beginning each with a new line, without any memorandum or imparlance.*]

51. Notice of Trial.

[*The form is the same as in ordinary cases, see ante, 50, and see 2 Chit. Ar. Pr. 758.*]

52. Nisi Prius Record in Q. B. (b)

Pleas before our lady the queen at Westminster, of — term (*the term of which issue was joined*), in the — year of the reign of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, and in the year of our Lord 1840.

Roll —.

— (to wit.) [*Here copy the issue and award of venire, beginning*

(a) See *ante*, 368, n. (a).

(b) The rules of H. T. 4 W. 4, as to the form of the nisi prius record

&c., are not applicable to an ejectment.

with the memorandum by bill and the declaration by original, and then proceed on a new line thus:]

Pleas before our lady the queen at Westminster, of — term (*the term in or after which the cause is to be tried*), in the — year of the reign of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, and in the year of our Lord 1840.

— to wit:) The jury between *John Doe*, by his attorney, plaintiff, and *C. D.* defendant, of a plea of trespass and ejectment of farm, is respited [*&c. conclude with the jurata, as in the form, ante, 66.*]

[*See 2 Chit. Ar. Pr. 756.*]

53. *Nisi Prius Record in C. P. (a)*

Pleas at Westminster before Sir Nicholas Conyngham Tindal, knight, and his companions, justices of our lady the queen of the Bench, of — term (*the term of which issue was joined*), in the — year of the reign of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, and in the year of our Lord 1840.

Roll —.

— (to wit:) *C. D.* was attached to answer *John Doe* [*&c. to the end of the issue and award of venire; after which, if the cause be not tried the same term in which issue was joined, there is a Second Placita, as in the above form in Q. B. of the term in or after which the trial is had; and then, or without a second placita if the cause be tried the same term, enter the jurata, thus:]*

— (to wit:) The jury between *John Doe*, plaintiff, and *C. D.* defendant, in a plea of trespass and ejectment of farm, is respited [*&c. conclude, stating the jurata, as ante, 66.*]

54. *Nisi Prius Record in Exchequer (a).*

Pleas before the barons of the Exchequer at Westminster, among the pleas of the term of — (*the term of which issue was joined*), in the — year of the reign of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, and in the year of our Lord 1840.

— (to wit:) [*Here copy the issue, as ante, 379, beginning with the memorandum, to the end of the venire, and proceed on the same line thus:]* Afterwards on the (*teste of distringas*) — day of —, A. D. —, the jury [*&c. conclude as in the form, ante, 66.*]

55. *Jury Process.*

[*The jury process is the same as in other cases, except in stating the plea to be "a plea of trespass and ejectment of farm." See 2 Chit. Ar. Pr. 757.*

(a) The rules of H. T. 4 W. 4, as &c. are not applicable to an ejectment to the form of the nisi prius record

56. Rule for Costs, for not proceeding to Trial according to Notice, in Q. B.

On — the — day of —, A. D. 1840.
Doe
 on the demise [or “ demises ”]
 of *L. P.* [and others.]
 v.
Roe.

Upon reading the affidavit of *D. A.* it is ordered, that the attornies on both sides shall attend the master, and he examine the matter, and tax the defendant his costs, for that the lessor of the plaintiff has not proceeded to trial pursuant to his notice; which costs, when taxed, shall be paid by the said lessor of the plaintiff, if it shall appear to the master that costs ought to be paid. Upon the motion of Mr. —.

By the Court.

57. Affidavit on Trial to induce Judge to certify for immediate Possession.

In the Q. B. [or “ C. P.” or “ Exch. of Pleas.”]
 Between *John Doe*, on demise of *L. P.* plaintiff,
 and
C. D. defendant.

P. A. of —, maketh oath and saith, that this action was brought for the recovery of a messuage, [farm,] and premises, situate in the parish of —, in the county of —, and that it was commenced in the month of — last past, and that immediately afterwards the said *C. D.* shut up the said messuage and removed all the furniture, stock and produce off and from the said messuage, [farm,] and premises, and hath thence hitherto left the same wholly unoccupied and deserted, and hath ever since suffered the fences and paling of and belonging to the said premises to be pulled down and greatly injured; and this deponent verily believes that unless possession of the said premises is immediately obtained by the lessor of the plaintiff, the said premises will be greatly wasted and deteriorated in value. And this deponent further saith, that the said *C. D.* upon being served with the declaration in this cause, declared to this deponent that he would keep the lessor of the plaintiff out of possession as long as he could, and leave the premises like a wilderness. [Alter this affidavit to meet the circumstance. See a similar form in *Chit. Sum. Pr.* 374.]

Sworn [&c. ante, 207.]

P. A.

[See 2 *Chit. Ar. Pr.* 760.]

58. Judge's Certificate on Trial, for immediate Writ of Possession.

I hereby certify my opinion that a writ of possession ought to be issued immediately in this cause. Dated the — day of —, A. D. 1840.

[Judge's signature.]

[See 2 *Chit. Ar. Pr.* 760, 765.]

59. Postea for Plaintiff on a Nonsuit, for Defendant not confessing Lease, Entry, and Ouster (a).

Afterwards, that is to say, on the day and at the place within contained, before the right honourable — (the chief justice or chief baron

(a) See the form of the postea on a nonsuit in other cases, post, 383.

of the court), the chief justice within mentioned. A.— C.—, esquire, being associated to the said chief justice, [or if tried by a *puisse judge*, say “before sir —, knight, one of the justices of our lady the queen assigned to hold pleas before the queen herself,” as the case may be; or in country causes; “before sir —, knight, one of the justices of our lady the queen assigned to hold pleas before the queen herself, and sir —, knight, one of the justices of our lady the queen of the Bench (or “sir —, knight, one of the barons of the Exchequer of our lady the queen”), justices of our said lady the queen assigned to take the assizes in and for the county of —,”] according to the form of the statute in such case made and provided, comes the within-named *John Doe*, by his attorney within-mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come, and to speak the truth of the matters within contained, being chosen, tried, and sworn*, the within-named *C. D.* is thereupon solemnly called to appear by himself, or by his counsel or attorney, and confess lease, entry, and ouster, and that he [or “his tenant”] was at the time of service of the within declaration in possession of the premises mentioned and specified in the said declaration, or of a certain parcel thereof: but the said *C. D.*, although solemnly called as aforesaid, comes not, by himself or by his counsel or attorney, nor doth he confess lease, entry, or ouster, nor doth he confess that he [or “his tenant”] was at the time of service of the said declaration in possession of the said premises or of any parcel thereof, but therein wholly makes default. Wherefore the said *John Doe* doth not further prosecute his suit against the said *C. D.* Therefore &c.

[See 2 Chit. Ar. Pr. 759.]

60. *Postea, for Plaintiff, on Verdict.*

Afterwards, [&c. as in preceding form, to the asterisk* and then thus:] say upon their oath, that the said *C. D.* is guilty of the trespass and ejectment [or “the several trespasses and ejectments”] within laid to his charge, in manner and form as the said *John Doe* hath within complained against him; and they assess the damages of the said *John Doe* by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to forty shillings. Therefore &c.

61. *Postea, for Plaintiff, where only a Moiety is recovered.*

[Same as in the form, supra, to the asterisk*, and then thus:] as to one undivided moiety (the whole into two equal moieties to be divided) of and in the tenements within mentioned, with the appurtenances, say upon their oath, that the said *C. D.* is guilty of the trespass and ejectment [or “the trespasses and ejectments”] within laid to his charge, in manner and form as the said *John Doe* hath within complained against him; and they assess the damages of the said *John Doe* by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to forty shillings. And as to the other undivided moiety of the tenements within mentioned, the jurors aforesaid, upon their oath aforesaid, say that the said *C. D.* is not guilty of the trespass and ejectment [or “trespasses and ejectments”] within laid to his charge. Therefore &c.

62. *Postea, where Part is found for Plaintiff, and Part for Defendant.*

[*Same as in the form, ante, 381, No. 58, to the asterisk*, and then thus :*] as to one messuage [&c.] parcel of the tenements within mentioned, say upon their oath, that the said *C. D.* is guilty of the trespasses and ejectment [*or “trespasses and ejectments”*] within laid to his charge, in manner and form as the said *John Doe* hath within thereof complained against him; and they assess the damages of the said *John Doe* by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to forty shillings. And as to the residue of the tenements within mentioned, the jurors aforesaid, upon their oath aforesaid, say that the said *C. D.* is not guilty of the trespass and ejectment [*or “trespasses and ejectments”*] within laid to his charge, in manner and form as the said *John Doe* hath within complained against him. Therefore &c.

63. *Postea, where Jury find against one Defendant, and for another by reason of his not confessing Lease &c.*

[*Proceed as in the form, ante, 381, No. 59, to the words :*] but therein wholly makes default; wherefore the said *John Doe* cannot maintain his action on this behalf against him &c. And hereupon the jurors aforesaid, upon their oath aforesaid, say that the defendant *E. F.* is guilty of the trespass and ejectment [*or “the trespasses and ejectments”*] within laid to his charge, in manner and form as the said *John Doe* hath within complained against him; and they assess the damages of the said *John Doe* against the said *E. F.* by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to forty shillings. And the jurors aforesaid, inasmuch as the said *John Doe*, for the cause aforesaid, cannot maintain his action in this behalf against the said *E. F.*, say upon their oath aforesaid, that the said *E. F.* is not guilty of the trespass and ejectment [*or “the trespasses and ejectments”*] within laid to his charge, in manner and form as the said *John Doe* hath within complained against him. Therefore &c.

[*See 2 Chit. Ar. Pr. 759.*]

64. *Postea, for Defendant on Verdict.*

[*Same as in the form, ante, 381, No. 59, to the asterisk*, and then thus :*] say upon their oath, that the said *C. D.* is not guilty of the trespass and ejectment [*or “trespasses and ejectments, or any or either of them”*] within laid to his charge, in manner and form as the said *John Doe* hath within complained against him. Therefore &c.

65. *Postea, for Defendant on a Nonsuit.*

Afterwards, on the day and year and at the place within mentioned, before the Right Honourable Thomas Lord Denman, chief justice of our lady the queen assigned to hold pleas before the queen herself, and others his fellows, justices of our said lady the queen assigned to take the assizes for the within mentioned county of Surrey, according to the form of the statute in such case made and provided, come the within named *John Doe*, and the within named defendant, by their respective attornies within named: And the jurors of the jury within mentioned, being empanelled and drawn by ballot according to the form of the statute in such case made and

provided, and called to appear, and being sworn to declare the truth touching the matters within contained, withdrew from the bar to consult on their verdict thereupon to be given, and it was consulted and agreed among them to give in their verdict, and for that purpose they came back here again to the bar. Whereupon the said *John Doe*, although solemnly required, cometh not again, nor further prosecuteth his suit in this behalf against the said defendant.

66. *Judgment, against the Casual Ejector.*

[*Proceed as in the form, ante, 381.*]

67. *Judgment, on Verdict for Plaintiff.*

Therefore it is considered that the said *John Doe* do recover against the said *C. D.* his said term [or "terms"] yet to come of and in the respective tenements aforesaid with the appurtenances, and also his said damages, costs, and charges, by the jurors aforesaid, in form aforesaid, assessed, and also £—— for his costs and charges by the court here adjudged of increase to the said *John Doe*, and with his assent; which said damages, costs, and charges in the whole amount to £——. And upon this the said *John Doe* prays the writ of our lady the queen, to be directed to the sheriff of —— aforesaid, commanding him that he cause the said *John Doe* to have possession of his said term [or "terms"] yet to come of and in the tenements aforesaid, with the appurtenances; and it is granted to him returnable on ——, wheresoever &c. [or in *Q. B.* by bill, "returnable before our lady the queen at Westminster on ——," or in *C. P.* or *Exch.* "returnable here on ——"] (a).

[*See 2 Chit. Ar. Pr. 763.*]

68. *The like, where a Moiety only is recovered.*

Therefore it is considered that the said *John Doe* do recover against the said *C. D.* his said term [or "terms"] yet to come of and in one undivided moiety (the whole into two equal moieties to be divided) of and in the tenements aforesaid [respectively], with the appurtenances, and also his damages, costs, and charges, by the jurors aforesaid, in form aforesaid, assessed, and also £—— for his said costs and charges by the court here adjudged of increase to the said *John Doe*, and with his assent; which said damages, costs, and charges in the whole amount to £——; and let the said *John Doe* be amerced for his false claim against the said *C. D.* as to the other undivided moiety of the tenements aforesaid, whereof the said *C. D.* is acquitted in form aforesaid, and that the said *C. D.* do go thereof without day &c. And upon this the said *John Doe* prays the writ of our lady the queen, to be directed to the sheriff of —— aforesaid, commanding him that he cause the said *John Doe* to have possession of his said term [or "terms"] yet to come of and in the said undivided moiety of and in the tenements aforesaid, with the appurtenances; and it is granted to him, returnable [&c. conclude as in the preceding form.]

(a) As to the return of the writ of execution, see *ante*, 367.

69. Judgment, where Part is found for Plaintiff, and Part for Defendant.

Therefore it is considered that the said *John Doe* do recover against the said *A. B.* his said term yet to come of and in the said messuage, (&c.) parcel &c. with the appurtenances, and the damages, costs, and charges aforesaid, by the jurors aforesaid in form aforesaid assessed, and also £—— for his said costs and charges by the court here adjudged of increase to the said *John Doe*, and with his assent; which said damages, costs, and charges in the whole amount to £——; and let the said *John Doe* be amerced for his false claim against the said *A. B.* as to the residue of the tenements in the said declaration mentioned, whereof the said *A. B.* is acquitted in form aforesaid; and the said *A. B.* go thereof without day &c. And hereupon the said *John Doe* prays the writ [&c. conclude as in the preceding form.]

70. Judgment on Verdict against one Defendant and for another, by reason of his not confessing Lease &c.

Therefore it is considered that the said *John Doe* do recover against the said *A. B.* his said term [or “terms”] yet to come of and in the tenements aforesaid [respectively], with the appurtenances, and also his said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed, and also £—— for his said costs and charges by the court here adjudged of increase to the said *John Doe*, and with his assent; which said damages, costs, and charges in the whole amount to £——. And it is also considered that the said *John Doe* take nothing by his said writ [or “bill”] against the said *E. F.*, but that he and his pledges to prosecute be in mercy &c.; and that the said *E. F.* do go thereof without day &c. And upon this the said *John Doe* prays the writ of our lady the queen against the said *A. B.* to be directed to the sheriff of the county of —— aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and it is granted to him, returnable [&c. conclude as in the form, ante, 384, No. 64.]

71. Judgment for Defendant on Verdict or Nonsuit.

Therefore it is considered by the court here that the said *John Doe* take nothing by his said writ [or “bill”], but that he and his pledges to prosecute be in mercy &c. And that the said *A. B.* do go thereof without day &c.

[See 2 Chit. Ar. Pr. 759, 763. See form of judgment of non-pros, for not replying, ante, 377.]

72. Rule for Execution against Casual Ejector, in Q. B. or Exch. upon Default made by Landlord at Trial.

On ——, the —— day of ——, A.D. ——, and in the —— year of Queen Victoria.

<p><i>John Doe</i> on the demise of <i>L. P.</i> against <i>Richard Roe.</i></p>	}	<p>Upon reading the rule made in this cause on ——, and another rule made in the same cause on ——, and the postea in the same cause being produced and read, it is ordered that <i>L. L.</i>, upon notice of this rule to be given to him, shall upon —— show cause why the plaintiff should not have leave to sue out execution</p>
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against the casual ejector, upon the judgment already signed against him in this behalf. Upon the motion of Mr. —.

By the Court.

[See 2 Chit. Ar. Pr. 753.]

73. *The like, in C. P.*

In the Common Pleas.

John Doe
on the demise of
L. P.
against
Richard Roe.

Upon reading a rule made in this cause in — term, — Victoria.
term last, whereby L. L. had leave to defend his title to the premises in question as landlord thereof, pursuant to the statute in such case made and provided, and another rule made in the same cause in the same term, and the record of nisi prius, and the postea thereupon indorsed, it is ordered that the plaintiff have leave to sue out execution against the casual ejector upon the judgment already signed against him in this behalf. On the motion of Mr. — for the plaintiff.

By the Court.

[Absolute in first instance.]

74. *Affidavit of Service on Defendant of Consent Rule and Allocatur, and of Demand and Refusal to found Attachment for Costs (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between John Doe on the demise [or "demises"] of L. P.
[and others] plaintiffs, and C. D. [or "L. L."] defendant.

L. P. of —, the above-named lessor of the plaintiff, maketh oath and saith, that he did, on the — day of — last [or "instant"], personally serve C. D., the above-named defendant, with the rule and the master's allocatur thereon, hereunto annexed, [annex them,] by delivering unto him the said C. D. true copies thereof respectively, and at the same time this defendant showed him the said original rule and allocatur: and that this deponent then demanded of him the said C. D. the costs allowed by the master upon the said rule: but that the said C. D. then refused to pay, and did not then or at any time since, pay the same to this deponent, or to any person on his behalf, and the same now wholly remain due and unpaid.

Sworn [&c. see ante, 207.]

[See 2 Chit. Ar. Pr. 761.]

75. *The like, of Service, &c. on Lessor of Plaintiff (a).*

In the Queen's Bench [&c. same title of court and cause as supra.]

C. D. of —, gentleman, maketh oath and saith, that he this deponent did, on the — day of — instant [or "last"], personally serve the above-named lessor of the plaintiff L. P. with the rule or order for the payment of costs, on account of his not having proceeded to trial pursuant to this notice, and the master's allocatur thereon, and also with the con-

(a) The successful party may, it seems, now issue execution on the consent rule, and is not obliged to resort to the tedious process of applying for

an attachment. See the forms of *fi. fa.* and *ca. sa.* in the following pages; and see 2 Chit. Ar. Pr. 761.

sent rule, [and if a *ca. sa.* has been issued "and writ of *capias ad satisfaciendum*, under the seal of this honourable court,"] hereunto annexed, [annex them,] by delivering unto him the said *L. P.* true copies thereof respectively; and at the same time this deponent showed the said original rules, allocatur, [and if a *ca. sa.* has been issued, "and writ of *capias ad satisfaciendum*,"] to the said *L. P.* and demanded of him the payment of the sum of £——, taxed upon the said first-mentioned rule or order, and also of the further sum of £——, being the costs adjudged to him this deponent, on the final judgment obtained in the above action, as appears by the master's allocatur on the said first-mentioned rule or order, [and by the said writ of *capias ad satisfaciendum*,] but the said *L. P.* refused to pay the same, or any part thereof, and the same are still wholly due and unpaid.

Sworn [*&c. as ante*, 207.]

C. D.

[*See 2 Chit. Ar. Pr.* 761.]

76. *Fi. fa. against the Defendant for costs taxed on the Consent Rule, after a Nonsuit for not confessing Lease, Entry, and Ouster (a).*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting (b): Whereas in —— term now last past a certain action of trespass and ejectment was pending in our court before us [or in *C. P.* "before our justices of the Bench," or in *Erch.* "before the barons of our Exchequer"], at Westminster, wherein *John Doe*, on the demise of *L. P.*, was the plaintiff, and *Richard Roe* the defendant, and such proceedings were thereupon had, that on ——, the —— day of —— last past, it was ordered by the said court, by the consent of the attornies of both parties in that action, that *W. K.* should be made defendant in the stead [*&c. here recite consent rule in the past tense.*] And whereas the said *W. K.*, in pursuance of the said order, did forthwith appear at the suit of the said plaintiff and receive a declaration of trespass and ejectment for the said premises and plead not guilty thereto, and issue was thereupon joined in the said action, and such proceedings were thereupon had in our said court that afterwards, that is to say, on the —— day of ——, A. D. ——, the said issue came on to be tried at ——, before ——, the chief justice [or "chief baron"] of our said court, *A. C.* esquire, being associated to the said chief justice [or in *Erch.* "chief baron," or if tried before a *puisne judge*, say "before Sir ——, knight, one of the justices of our lady the queen assigned to hold pleas in our court before us," or as the case may be, or in country causes, "before Sir ——, knight, one of the justices assigned to hold pleas in our court before us and Sir ——, knight, one of the justices of our court of —— (or as the case may be), the justices assigned to take the assizes in and for the county of ——], according to the form of the statute in such case made and provided*; and the said *John Doe* then and there came by his attorney, and the jurors of the jury duly summoned and chosen to try the said issue then and there also came, who to speak the truth of the matters contained in the said issue being chosen, tried and sworn, the said *W. K.* was thereupon solemnly called to appear by himself or his attorney and confess lease, entry, and ouster, and that he was at the time of the service of the said

(a) *See 1 & 2 Vict. c. 110, s. 18.*

(b) *See as to the directions of writs, ante, 20, n. (a).*

declaration in possession of the premises hereinbefore mentioned, but the said *W. K.*, although solemnly called, came not by himself or by his counsel or attorney, nor did he confess lease, entry, or ouster, nor did he confess that he was at the time of the service of the said declaration in possession of the said premises or any part thereof, but therein wholly made default: wherefore the said *John Doe* did not further prosecute his suit against the said *W. K.*; and afterwards, to wit, on the — day of —, A. D. —, the costs of the said *L. P.* [*or "John Doe," according as the consent rule directs the costs to be paid*], by him sustained in and about the said action of trespass and ejectment, and to be adjudged to him under and in pursuance of the aforesaid rule or order of the said court, were taxed and allowed by our said court at the sum of £——†: Therefore we command you that of the goods and chattels of the said *W. K.* in your bailiwick you cause to be made the said sum of £——, together with interest upon the said sum of £——, at the rate of £4 per centum per annum from the said — day of —, A. D. —, [*the day on which the costs were taxed on the consent rule, or if that were prior to the 1st of October, 1838, say "from the 1st of October, A. D. 1838,"*] and have that money, together with such interest as aforesaid, before us [*or in C. P. "before the justices of our said court of the Bench," or in Exch. "before the barons of our Exchequer"*], at Westminster, immediately after the execution hereof, to be rendered to the said *L. P.* [*or "John Doe, according as the consent rule directs the costs to be paid"*], for the said sum of £—— so ordered to be paid and so taxed and allowed as aforesaid, and for such interest as aforesaid †, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices of the Bench," or in Exch. "to the said barons"*], at Westminster, immediately after the execution thereof, and have there then this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, A. D. —.

77. *Ca. su. for the same.*

[*Same as in preceding form to the dagger †, and then as follows:*] Therefore we command you that you take the said *W. K.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in C. P. "before the justices of our said court of the Bench," or in Exch. "before the barons of our Exchequer"*], at Westminster, immediately after the execution hereof, to satisfy the said *L. P.* [*or "John Doe," according as the consent rule directs the costs to be paid*], the said sum of £——, together with interest upon that sum at the rate of £4 per centum per annum, from the said — day of —, A. D. —, [*the day on which the costs of the rule were taxed, or if that were prior to the 1st of October, 1838, say "from the 1st day of October, A. D. 1838,"*] and have there then this writ. Witness [*&c. as in preceding form.*]

78. *Fi. fa. against the Lessor of the Plaintiff for Costs taxed on the Consent Rule after a Nonsuit on the Merits.*

[*Same as ante, 387, No. 76, to the asterisk*, and then as follows:*] And the jurors of the jury upon the said trial being impanelled and drawn by ballot, according to the form of the statute in that case made and pro-

vided, and called, appeared, and being chosen, tried and sworn to declare the truth touching the matters contained in the said issue *, withdrew from the bar to consult on their verdict to be thereupon given, and it was consulted and agreed among them to give in their verdict, and for that purpose they came back there again to the bar: whereupon the said *John Doe*, although solemnly required, came not again nor further prosecuted his suit in that behalf against the said defendant, and thereupon it was considered by our said court before us that the said *John Doe* should take nothing by our said writ in that behalf, but that he and his pledges to prosecute should be in mercy, &c. and that the said *W. K.* should go thereof without day, &c. And whereas afterwards, to wit, on the — day of —, A.D. —, the costs of the said *W. K.* by him in and about his defence to the said action in that behalf expended, and to be adjudged to him under and in pursuance of the aforesaid rule or order of our said court, were taxed and allowed by our said court at the sum of £—— †. Therefore we command you, that of the goods and chattels of the said *L. P.* in your bailiwick you cause to be made the said sum of £——, together with interest on that sum at the rate of £4 per centum per annum from the said — day of —, A. D. —, [*the day on which the costs were taxed, or if that were prior to the 1st of October, 1838, say "from the 1st day of October, A. D. 1838,"*] and have that money, together with such interest as aforesaid, before us [*or in C. P. "before the justices of our court of the bench," or in Exch. "before the barons of our Exchequer"*], at Westminster, immediately after the execution hereof, to be rendered to the said *W. K.* for his costs and interest as aforesaid, and that you do [*&c. as in the form, ante, 387, No. 76, from the † to the end.*]

79. *Ca. sa. for the same.*

[*Same as in preceding form, No. 78, to the dagger†, and then as follows:*] Therefore we command you*, that you take the said *L. P.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in C. P. "before the justices of our court of the Bench," or in Exch. "before the barons of our Exchequer"*], at Westminster, immediately after the execution hereof, to satisfy the said *W. K.* the said sum of £——, together with interest upon that sum from the said — day of —, A. D. —, [*the day on which the costs were taxed, or if that were before the 1st of October, 1838, say "from the 1st day of October, A. D. 1838,"*] and have there then this writ. Witness — (*name of chief justice or chief baron*), the — day of —, A. D. —.

80. *Fi. fa. against the Lessor of the Plaintiff for Costs taxed on the Consent Rule after a Verdict for the Defendant.*

[*Same as the form, ante, 388, No. 78, to the asterisk*, and then as follows:*] then and there upon their oath said that the said defendant *W. K.* was not guilty of the said trespass and ejectment laid to his charge, or of any part thereof, and thereupon a verdict was then given by the said jury for the said defendant *W. K.*: Whereupon it was considered by our said court that the said *John Doe* should take nothing by his writ in that behalf, but that he and his pledges to prosecute should be in mercy, &c. And that the said *W. K.* should go thereof without day, &c. And whereas afterwards, to wit, on the — day of —, A. D. —, the costs of the said *W. K.* by him in and about his defence to the said action in that behalf expended and to be adjudged to him under and by virtue of

the aforesaid rule or order of our said court were taxed, allowed, and adjudged by our said court at the sum of £———. Therefore we command you [&c. as in the form, ante, 388, No. 78, from the dagger †, to the end.]

81. *Ca. sa. for the same.*

[Same as the form, ante, 389, No. 80, to the dagger †, and then as follows:] Therefore we command you [⌘ proceed as in the form, ante, 389, No. 79, from the asterisk* to the end.]

82. *Habere Facias Possessionem, upon a single Demise.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ———, greeting (a): Whereas *John Doe* lately in our court before us [or in *C. P.* “before our justices,” or in *Erch.* “before the barons of our Exchequer”] at Westminster, by the consideration and judgment of the same court, recovered against *C. D.* his term yet to come of and in two messuages and two acres of land [&c. as in consent rule], with the appurtenances, situate in the parish of ———, in your bailiwick, which *L. P.* had, on ———, (day of demise in declaration,) demised to the said *John Doe*, for a term which is not yet expired; by virtue of which said demise the said *John Doe* entered into the said tenements, with the appurtenances, and was thereof possessed, until the said *C. D.* afterwards, on &c., (day of ouster stated in declaration,) with force and arms &c., entered into the said tenements with the appurtenances so demised to the said *John Doe* for the term aforesaid, and ejected the said *John Doe* from his said farm; whereof the said *C. D.* is convicted, as appears to us of record: [or in *C. P.* omit the words “as appears to us of record,” or in *Erch.* say “as by inspecting the rolls of our Exchequer appears to us”]. *Therefore we command you that without delay you cause the said *John Doe* to have possession of his said term yet to come of and in the tenements aforesaid with the appurtenances, and in what manner you shall have executed this our writ make appear to us on ——— (b), wheresoever we shall then be in England [or in *Q. B.* by bill, “to us at Westminster, on ———,” or in *C. P.* “to our justices at Westminster, on ———,” or in *Erch.* “to the barons of our Exchequer at Westminster,”] and have you there [if by bill in *Q. B.* say “there then”] this writ. Witness ——— (name of chief justice or chief baron), at Westminster, the ——— day of ———, in the year of our Lord ———.

[See 2 *Chit. Ar. Pr.* 766.]

83. *The like, upon a double Demise and one Ouster.*

Victoria, [&c. as supra, No. 82,] to the sheriff of ———, greeting: Whereas *John Doe* lately in our court before us [or in *C. P.* “before our justices,” or in *Erch.* “before the barons of our Exchequer”] at Westminster, by the consideration and judgment of the same court, recovered against *C. D.* his term yet to come of and in two messuages and two acres of land [&c. as in consent rule], with the appurtenances, situate in the parish of ———, in your bailiwick, which *L. P.* had, on ———, (day of demise in declaration,) demised to the said *John Doe*, for a term which is

(a) As to the directions of writs, see ante, 20, n. (a).

(b) It seems that the writ cannot

be made returnable “immediately after the execution” thereof. See 2 *Chit. Ar. Pr.* 766.

not yet expired: And also his other term yet to come of and in two other messuages and two other acres of land [*&c. as in declaration*], with the appurtenances, situate in the parish aforesaid in your bailiwick, which *L. P.* on ——— (*day of second demise in declaration*) demised to the said *John Doe* for a term which is not yet expired; by virtue of which said several demises, the said *John Doe* entered into the said several tenements with the appurtenances, so demised to the said *John Doe* for the terms aforesaid, which are not yet expired, and ejected the said *John Doe* from his said several farms; whereof the said *C. D.* is convicted, as appears to us of record, [*or in C. P. omit the words "as appears to us of record," or in Exch. say "as by inspecting the rolls of our Exchequer appears to us."*] Therefore we command you, that without delay you cause the said *John Doe* to have possession of his said several terms yet to come of and in the several tenements aforesaid respectively, with the appurtenances; and in what manner you shall have executed this our writ make appear [*&c. conclude as in the form, ante, 390, No. 82.*]

[*See 2 Chit. Ar. Pr. 766.*]

84. *The like, upon a double Demise and double Ouster.*

Victoria, [*&c. as ante, 390, No. 82,*] to the sheriff of ———, greeting: Whereas [*&c. as in form, 390, No. 82, to the asterisk*, and then thus:*] And whereas also the said *John Doe*, lately in our same court, by the consideration and judgment of the same court, recovered against the said *C. D.* his term yet to come of and in two other messuages, and two other acres of land [*&c. as in declaration*], with the appurtenances, situate in the parish aforesaid, in your bailiwick, which *T. P.* on ——— (*day of second demise in declaration*) demised to the said *John Doe* for a term which is not yet expired; by virtue of which said last-mentioned demise the said *John Doe* entered into the said last-mentioned tenements, with the appurtenances, and was thereof possessed, until the said *C. D.* afterwards on ——— (*day of second ouster stated in declaration*), with force and arms &c. entered into the said last-mentioned tenements, with the appurtenances, so demised to the said *John Doe* for the term aforesaid, which is not yet expired, and ejected the said *John Doe* from his said last-mentioned farm: whereof the said *C. D.* is convicted, as also appears to us of record, [*or in C. P. omit "as appears to us of record," or in Exch. say "as by inspecting the rolls of our said Exchequer appears to us."*] Therefore we command you, that without delay you cause the said *John Doe* to have possession of his said several terms yet to come of and in the tenements aforesaid respectively, with the appurtenances; and in what manner you shall have executed this our writ make appear [*&c. conclude as in the form, ante, 390, No. 82.*]

[*See 2 Chit. Ar. Pr. 766.*]

85. *The like, on a single Demise, in Q. B. or C. P. or Exchequer, under 11 Geo. 4 & 1 Will. 4, c. 70, s. 38, where the Judge certifies for immediate Execution (a).*

Victoria, [*&c. as ante, 390, No. 82,*] to the sheriff of ———, greeting: Whereas on the ——— day of ———, in the ——— year of our reign, a cause came on to be tried before the Right Honourable Thomas Lord Denman, our chief justice [*or "———, one of our justices"*] assigned to hold pleas in our court before us [*or in C. P. "before Sir Nicholas Conyngham*

(a) See another form, Ch. Prac. 229.

Tindal, knight, our chief justice (or "——, one of our justices") of the Bench at Westminster," or in *Exchequer*, "before the Right Honourable James Lord Abinger, our chief baron," or "——, one of our barons"] at the Guildhall of the city of London [or if in *Middlesex*, "at Westminster Hall, in the county of Middlesex," or "at the assizes, before ——, one of our justices assigned to take the assizes in and for the county of ——"], that is to say, a certain cause wherein *John Doe* on the demise of *L. P.* was plaintiff, and *C. D.* was defendant, for the recovery of the possession of his the said *John Doe*'s term then and yet to come of and in two messuages, two acres of land [&c. as in declaration in ejectment], with the appurtenances, situate in the parish of ——, in your bailiwick, which *L. P.* on &c. (day of demise as laid in declaration) had demised to the said *John Doe*, to hold the same to the said *John Doe* and his assigns for a term which is not yet expired; by virtue of which said demise the said *John Doe* entered into the said tenements with the appurtenances, and was possessed thereof until the said *C. D.* afterwards, to wit, on &c. [day of ouster laid in declaration], with force and arms &c. entered into the said tenements, with the appurtenances, which the said *L. P.* had demised to the said *John Doe* in manner and for the term aforesaid, which is not yet expired, and ejected him the said *John Doe* from his said farm; and on the trial of which said cause a verdict was given for the said *John Doe* [or "the said *John Doe* was nonsuited for want of the said *C. D.*'s appearing to confess lease, entry, or ouster"]; and our said chief justice [or "our said justice" or "baron"] having certified his opinion on the back of the record that a writ of possession ought to be issued immediately in the said cause, therefore we command you that without delay you cause the said *John Doe* to have the possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and in what manner you shall have executed this our writ make appear to us [&c. conclude as in the form, ante, 390, No. 82.]

[If there be two demises and one or more ousters, the above form may be readily adapted to the case by comparing with the forms, ante, 390, 391. See 2 Chit. Ar. Pr. 766, 767.]

86. *Habere facias possessionem, into a County Palatine.*

Victoria, [&c. as ante, 390, No. 82,] to our chancellor of our county palatine of Lancaster [or "Durham"] (a), or to his deputy there, greeting: Whereas [&c. proceed as in the preceding writs, to the words "whereof &c." inclusive, and then thus:] Therefore we command you, that by our writ, under the seal of our said county palatine to be duly made and directed to the sheriff of the same county, you command the said sheriff, that without delay he cause the said *John Doe* to have the possession of his term [or "terms"] aforesaid, yet to come of and in the tenements [or "several tenements"] aforesaid, with the appurtenances: And in what manner the said sheriff shall execute our said writ, let him certify to you, so that you may make the same known to us immediately after the execution thereof, whosoever we shall then be in England [or in *Q. B.* by bill, "to us at Westminster, immediately after the execution thereof," or in *C. P.* "to our justices at Westminster, immediately after the execution thereof," or in *Exch.* "to the barons of our Exchequer at Westminster, immediately after the execution thereof"], and have there [or by bill in *Q. B.* "have there then"] this writ. Witness —— (name of chief justice or chief baron), at Westminster, the —— day of ——, in the year of our Lord ——.

(a) See as to Durham, ante, 21, n. (b).

87. *Habere facias possessionem against Casual Ejector.*

[*The form in this case is the same as the preceding forms, substituting "Richard Roe," for the name of the tenant in possession.*]

88. *Fi. Fa. or Ca. Sa. for Damages and Costs only, after a Verdict for the Plaintiff.*

[*This form is the same as the fi. fa. or ca. sa. in covenant, ante, 152, 192, except that instead of the words "by reason of the breach of a certain covenant made between the said A. B. and the said C. D." say "by reason of a certain trespass and ejectment (or 'certain trespasses and ejectments') then lately committed by the said C. D."*]

[*See 2 Chit. Ar. Pr. 767.*]

89. *Habere fucias and Fi. Fa. in one Writ, in Q. B. by original, after a Verdict for the Plaintiff.*

Victoria, [*&c. as ante, 390, No. 82,*] to the sheriff of —, greeting ; Whereas [*&c. proceed as in the habere fucias, ante, 390, &c. to the return day inclusive, and then thus :*] We also command you, that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made £——, which the said John Doe lately in our said court recovered against the said C. D. for his damages which he had sustained, as well on occasion of the trespass and ejectment [*or "trespasses and ejectments"*] aforesaid, as for his costs and charges by him about his suit in that behalf expended ; whereof the said C. D. is also convicted, as appears to us of record, together with interest upon the said sum of £—— at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up [*or if entered up prior to 1st Oct. 1838, say "from the 1st day of October. A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*]. And that you have the said money and said interest as aforesaid before us on —, wheresoever we shall then be in England, to be rendered to the said John Doe, for his damages aforesaid ; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf : and in what manner you shall have executed this our writ make known to us on — aforesaid, wheresoever we shall then be in England : and have there this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 767.*]

90. *The like, in C. P.*

Victoria, [*&c. as ante, 390, No. 82,*] to the sheriff of —, greeting : Whereas [*&c. proceed as in the habere fucias, ante, 390, &c. to the return day inclusive, and then thus :*] We also command you, that of the goods and chattels of the said C. D. in your bailiwick you cause to be made £——, which the said John Doe lately in our said court recovered against the said C. D. for his damages which he had sustained, as well on occasion of the trespass and ejectment [*or "trespasses and ejectments"*] aforesaid, as for his costs and charges by him about his suit in that behalf expended ; whereof the said C. D. is also convicted, together with interest

on the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. ——, on which day the judgment aforesaid was entered up [*or if entered up before 1st Oct. 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*]. And that you have the said money, together with such interest as aforesaid, before our said justices at Westminster, on ——, to be rendered to the said *John Doe* for his damages aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and in what manner you shall have executed this our writ make appear to our said justices at Westminster, on —— aforesaid, and have there this writ. Witness —— (*name of chief justice*), at Westminster, the —— day of ——, in the year of our Lord ——.

91. *The like, in Exchequer.*

Victoria, [*&c. ante, 390, No. 82,*] to the sheriff of ——, greeting: Whereas [*&c. proceed as in the habere facias, ante, 390, &c. to the return day inclusive, and then thus:*] We also command you, that you omit not by reason of any liberty of your county, but that you enter the same, and of the goods and chattels of *C. D.* in your bailiwick you cause to be made £——, which in our said court were adjudged to the said *John Doe*, for his damages which he had sustained, on occasion of the trespass and ejectment [*or "trespasses and ejectments"*] aforesaid; whereof the said *C. D.* is also convicted, as by inspecting the rolls of our said Exchequer appears to us, together with interest upon the said sum of £——, from the —— day of ——, A. D. ——, on which day the judgment aforesaid was entered up [*or if entered up before 1st Oct. 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*]. And that you have the said money, together with such interest as aforesaid, before the barons of our Exchequer, at Westminster, on ——, to be rendered to the said *John Doe* or his attorney in this behalf, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and in what manner you shall have executed this our writ make appear to the barons of our said Exchequer at Westminster, on ——, and have there this writ. Witness —— (*name of chief baron*), at Westminster, the —— day of —— in the year of our Lord ——.

92. *Habere Facias and Capias ad Satisfaciendum, in Q. B. after a Verdict for the Plaintiff.*

Victoria, [*&c. ante, 390, No. 82,*] to the sheriff of ——, greeting: Whereas [*&c. proceed as in the habere facias, ante, 390, &c. to the return day inclusive, and then thus:*] We also command you, that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us on ——, wheresoever we shall then be in England [*or if in bill "at Westminster, on ——"*], to satisfy the said *John Doe* £——, which in our said court before us at Westminster aforesaid were adjudged to the said *John Doe*, for his damages which he had sustained, as well on occasion of the trespass and ejectment [*or "trespasses and ejectments"*] aforesaid as for his costs and charges by him about his suit in that behalf expended: whereof the said *C. D.* is also convicted, as appears to us of record: together with interest upon

the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. ——, on which day the judgment aforesaid was entered up [or *if entered up before 1st Oct. 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*]: and have there this writ. Witness —— (*name of chief justice*), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 Chit. Ar. Pr. 766.]

93. *The like, in C. P. or Exchequer.*

Victoria, [&c. *ante*, 390, No. 82,] to the sheriff of ——, greeting: Whereas [&c. *proceed as in the habere facias, ante*, 390, &c. *to the return day inclusive, and then thus:*] We also command you, that you [*if in Exchequer here insert "that you omit not by reason of any liberty in your bailiwick, but that you enter the same and"*] take the said C. D. if [*or in Exch. "wheresoever"*] he shall be found in your bailiwick, and him safely keep, so that you may have his body before our said justices, [*or in Exch. "before the barons of our Exchequer"*] at Westminster, on ——, to satisfy the said John Doe £——, which in our said court were adjudged to the said John Doe, for his damages which he had sustained, as well on occasion of the trespass and ejectment [*or "trespasses and ejectments"*] aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is also convicted, [*if in Exch. here insert "as by inspecting the rolls of our said Exchequer appears to us"*], together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. ——, on which day the judgment aforesaid was entered up [*or if entered up before 1st Oct. 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*]: and have there this writ. Witness —— (*name of chief justice or chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

94. *Attornment.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between John Doe on the demise [*or "demises"*]
of L. P. [and others], plaintiff,
C. D. and E. F. defendants.

We, whose names are hereunto subscribed, being the tenants in possession of the premises for which this action has been brought, situate in the parish of ——, in the county of ——, do hereby severally attorn tenants to L. P. [and E. F.] of ——, for such parts of the said premises as are in our respective possessions: and we have this day severally paid unto the said L. P. [and E. F.] the sum of one shilling each, upon such attornment, on account of and in part payment of the rent due and to become due from us, severally and respectively, for and in respect of the said premises, and we do severally and respectively become tenants thereof to the said L. P. [and E. F.] from the —— day of —— last; as witness our hands this —— day of ——, 1840.

Witness, W. W.

C. D.

E. F.

[See 2 Chit. Ar. Pr. 768.]

SECTION II.

PROCEEDINGS IN EJECTMENT, ON A VACANT POSSESSION.

1. *Letter of Attorney to enter and seal Lease, &c.*

Know all men by these presents, that I, *L. P.* of —, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint *P. A.*, of —, gentleman, to be my true and lawful attorney for me, and in my name to enter into and take possession of a certain messuage [farm] and premises, late in the tenure and occupation of *J. J.*, situate in the parish of —, in the county of —, but now untenanted; and after the said *P. A.* shall have taken possession thereof, for me and in my name, and as my act and deed, to sign, seal, and execute a lease of the said premises, with the appurtenances, to *A. B.*, of —, gentleman, to have and to hold the same to the said *A. B.*, his executors, administrators, and assigns, from — last past, to the full end and term of five years from thence next following, and fully to be complete and ended, at the yearly rent of one pepper-corn, if the same shall be properly demanded; subject nevertheless to a proviso to make void the same, on payment or tender by me, my executors, administrators, or assigns, of the sum of sixpence, to the said *A. B.*, his executors, administrators, or assigns. In witness whereof I have hereunto set my hand and seal this — day of —, A.D. —.

Sealed and delivered in my presence,
being first duly stamped.

W. W.

L. P. (L. s.)

[See 2 Chit. Ar. Pr. 771.]

2. *Affidavit of executing same.*

W. W. of —, gentleman, maketh oath and saith, that he was present and did see *L. P.*, of —, named in the letter of attorney hereunto annexed, duly sign, seal, and deliver the said letter of attorney.

Sworn [&c. see ante, 207.]

W. W.

[See 2 Chit. Ar. Pr. 772.]

3. *Lease.*

This indenture, made the — day of —, in the year of our Lord 1840, between *L. P.*, of —, of the one part, and *A. B.* of —, gentleman, of the other part, witnesseth, that the said *L. P.* for and in consideration of the sum of five shillings of lawful money of Great Britain to him in hand paid by the said *A. B.* at or before the sealing and delivery of these presents, the receipt whereof the said *L. P.* doth hereby acknowledge, hath demised, granted, and to farm let unto the said *A. B.*, his executors and administrators, all that messuage [&c.] and premises situate in the parish of —, in the county of —, late in the tenure and occupation of *J. J.*, but now untenanted; to have and to hold the same unto the said *A. B.*, his executors and administrators, from the — day of — last past, for and during and unto the full end and term of five years from thence next ensuing, and fully to be complete and ended; yielding and paying therefore yearly and every year during the said term, unto

the said *L. P.* or his assigns, the rent of one pepper-corn, if lawfully demanded, on —: Provided always, and these presents are on this condition, that if the said *L. P.* or his assigns, shall at any time or times hereafter tender or cause to be tendered unto the said *A. B.*, his executors or administrators, the sum of sixpence, that then and in such case, and from thenceforth, this present indenture, and every thing herein contained, shall cease, determine, and be absolutely void, any thing herein contained to the contrary thereof in anywise notwithstanding. In witness whereof the parties hereto have interchangeably set their hands and seals the day and year first above written.

Sealed and delivered, as the act and deed of the above named *L. P.* by *P. A.* of —, by virtue of a letter of attorney to him for that purpose made by the said *L. P.*, bearing date [&c.] (being first duly stamped) in the presence of *W. W.*

L. P. (L. s.)
A. B. (L. s.)
 [or "For *L. P.*, by
 power of attorney
 in this behalf.
P. A. (L. s.)"]

4. *Declaration and Notice to appear.*

[The declaration in this case is the same as in other cases, except that the plaintiff and defendant, and lessor of the plaintiff, are named; and instead of the usual notice to appear and plead, use the following:] Take notice, that unless you appear in her majesty's Court of Queen's Bench [or "C. P." or "Exch. of Pleas"] at Westminster, within the first four days [or if in the country, "within the first eight days"] of next — term, at the suit of the above-named plaintiff *A. B.*, and plead to this declaration in ejectment, judgment will be thereupon entered against you by default. Dated &c.

To Mr. *C. C.* [the tenant.]

Yours &c.
P. A. plaintiff's attorney.

5. *Affidavit for Rule for Judgment in Q. B. or Exch.*

In the Q. B. [or "Exch. of Pleas."]

Between *A. B.*, on the demise of *L. P.*, plaintiff, and *C. D.* defendant.

IV. W., of —, maketh oath and saith, that on the — day of — last [or "instant"] he saw *P. A.*, in the letter of attorney hereto annexed named, for and in the name of *L. P.*, the lessor of the plaintiff, enter upon and take possession of the messuage, [farm,] and premises, in the lease hereto annexed mentioned, [annex it,] by entering on [the threshold of the outer door thereof, and putting his finger into the key-hole of the said door, the said messuage, [farm,] and premises, being then locked up and uninhabited, so that no other (or "better") entry thereon could be made, nor any possession thereof taken, without force:] And this deponent further saith, that he did, on the same day, see the above-named *P. A.* after such entry made, and whilst he [stood on the threshold of the said door], duly sign and seal the lease hereunto annexed, in the name of the said *L. P.*, and as his act and deed deliver the same unto the said *A. B.*, the plaintiff above-named; and that after the said lease was so executed, this deponent did see the said *A. B.* take possession of the said messuage, [farm,] and premises, by virtue of the said lease, by entering upon [the threshold of the said outer door, and putting his finger into the key-hole of the said door, the said messuage, [farm,] and premises, being

then locked up and uninhabited,] so that no other or better entry could be made thereon, save as aforesaid; and that immediately afterwards the said C. D., the defendant, came and removed the said A. B. from the said door, and put his foot on the threshold thereof; whereupon this deponent did, on the day and year aforesaid, deliver to the said defendant C. D., who still continued upon the said threshold, a true copy of the declaration of ejectment, and notice thereunder written, hereto annexed. [*Annex it.*]
 Sworn [&c. ante, 207.] W. W.

[See 2 Chit. Ar. Pr. 772.]

[This affidavit is unnecessary in C. P. In that court the practice is for the plaintiff at first to give a rule to plead, as in ordinary cases; and at the expiration of the time for pleading, if there be no appearance and plea, he may sign judgment.]

6. The form of Rule for Judgment against the defendant is as ante, 366, No. 15; of the *Præcipe* for Rule to plead in C. P. as ante, 38, No. 3; of the *Præcipe* for Appearance of Defendant, as ante, 371, No. 29; of the Judgment against the Defendant, as ante, 367, No. 20, (inserting the real Names of the Lessee and Ejector); and that of the *Habere Facias Possessionem* thereon, as ante, 390, No. 82, &c.]

SECTION III.

PROCEEDINGS IN EJECTMENT BY LANDLORD AGAINST TENANT, UNDER STAT. 4 GEO. 2, c. 28.

1. [*The forms of the Declaration and Notice, where the Premises are tenanted, are the same as usual; see forms, ante, 359 to 362.*]

[See 2 Chit. Ar. Pr. 774, 775.]

2. *Affidavit of Service of Declaration and Notice, where the Premises are tenanted.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between John Doe, on the demise of L. P., plaintiff, and
 Richard Roe, defendant.

L. P., of —, lessor of the above-named plaintiff, and P. A., of —, attorney for the said L. P., severally make oath and say; and first this deponent P. A., for himself saith, that he did, on [&c. proceed as in the forms, ante, 362, &c. and then thus:] And this other deponent L. P. for himself saith, that before the said declaration was served as aforesaid, there was due to this deponent, as landlord of the said premises, from the said C. D. the tenant thereof, the sum of £ — for [half] a year's rent of the premises, for which this action is brought, under and by virtue of an indenture of lease, and that no sufficient distress was then to be found upon the said premises, countervailing the said arrears of rent then due. And this deponent L. P. further saith, that at the time of serving the said declaration and notice as aforesaid, this deponent had power to re-enter

upon the said premises, by virtue of the said lease, for the non-payment of the rent so in arrear as aforesaid.

L. P.

P. A.

Sworn [*&c. ante, 207.*]

[*See 2 Chit. Ar. Pr. 775.*]

3. *The same where the Premises are not tenanted.*

[*The forms of Declaration and Notice, where the Premises are not tenanted, are the same as those where the premises are tenanted, the notice, however, being directed to the tenant last in possession; see the forms, ante, 359 to 362.*]

[*See 2 Chit. Ar. Pr. 774.*]

4. *Affidavit of Service of Declaration and Notice upon a Vacant Possession.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *John Doe*, on the demise of *L. P.*, plaintiff, and
Richard Roe, defendant.

L. P., of —, the above-named lessor of the plaintiff, and *P. A.*, of —, gentleman, attorney for the said lessor, severally make oath and say; and first this deponent *P. A.* for himself saith, that on — last [*or "instant"*], and for several days before, the messuage, [*farm,*] and premises, for which this action is brought, and which was lately in the occupation of *C. D.*, was shut up and unoccupied, and there was no tenant in the actual possession thereof, nor could this deponent legally serve a copy of the declaration hereunto annexed, [*annex it,*] and that this deponent therefore did, on &c. — aforesaid, affix a true copy of the said declaration and of the notice thereunder written, upon the outer door of the said messuage, [*if the ejectment be for a house, say "upon —, being a notorious place of the lands and premises comprised in the said declaration."*] And this other deponent *L. P.* for himself saith, that before the said declaration and notice were so affixed as aforesaid, there was due to this deponent, as landlord of the said premises, from the said *C. D.*, the tenant thereof, the sum of £—— for [*half*] a year's rent of the said premises, under and by virtue of an indenture of lease, and that no sufficient distress was then to be found upon the said premises, countervailing the said arrears of rent then due. And this deponent *L. P.* further saith, that at the time of affixing the said copy of the said declaration and notice as aforesaid, this deponent had power to re-enter upon the said premises, by virtue of the said lease, for the non-payment of the rent so in arrear as aforesaid.

L. P.

P. A.

Sworn [*&c. ante, 207.*]

[*See 2 Chit. Ar. Pr. 775.*]

5. [*The Form of the Rule for Judgment against the Casual Ejector, the Appearance, Plea, and all the other Forms of Proceedings and Entries, are the same as those ante, 366 to 395.*]

SECTION IV.

PROCEEDINGS IN EJECTMENT BY LANDLORD AGAINST TENANT, UNDER
STAT. 1 GEO. 4, c. 87.1. *Demand of Possession, where Tenancy expired by Effluxion of Time.*

Sir,

I hereby [*or if by an agent, say "as agent for Mr. A. B., your landlord, and on his behalf"*], according to the statute in that behalf, demand of and require you immediately to give and deliver up to me [*or "the said A. B."*] possession of the dwelling-house, [lands,] and premises, with the appurtenances, situate in the parish of —, in the county of —, which you held as tenant thereof*, under and by virtue of a lease bearing date [&c.] by [him] to you made in that behalf, your term therein having expired. Dated this — day of —, 1840.

To Mr. C. D.

A. B.

[*or "E. F., agent for the said A. B."*]
[See 2 Chit. Ar. Pr. 778.]

2. *The like, where Tenancy expired by Notice to quit.*

[*As in the last form to the asterisk*, and then thus:*] as tenant thereof from year to year, under and by virtue of an agreement in writing, dated &c., and which tenancy of and in the same has been determined by a notice to quit(a) given to [*or "by"*] you in that behalf. Dated this — day of —, 1840.

A. B.

To Mr. C. D.

[*or "E. F., agent for the said A. B."*]3. *Declaration and Notice(b).*

[*The declaration is the same as in ordinary cases, ante, 359 to 362, but let the notice thereto be as follows:*]

Mr. C. D. (*the tenant or tenants in actual possession.*)

Take notice, that, according to the statute in such case made and provided, you are hereby required to appear in her majesty's court of Q. B. [*or "C. P." or in the Exchequer "in the Office of Pleas of her majesty's Court of Exchequer"*], at Westminster, [*or by original in Q. B. "wheresoever her majesty shall then be in England,"*] on the first day of next — term(c), then and there to be made defendant in this action of ejectment, and then and there to enter into a recognizance, by yourself and two sufficient sureties, in such sum as to the said court shall seem reasonable, conditioned to pay the costs and damages which shall be recovered in this action, if the said court shall so order; and for such purposes as are specified in and by an act of parliament made and passed in the first year of the reign of his late Majesty King George the Fourth, entitled "An Act for enabling Landlords more speedily to recover Pos-

(a) See form, *ante*, 357.(b) See as to the sufficiency of this form, &c. *Doe d. Beard v. Roe*, 1 M. & W. 360; and see a more special form, Tidd, 624.

(c) The notice in this case should

require an appearance on the first day of term, whether it be a town or a country cause. *Doe d. Holder v. Rushworth*, 6 Dowl. 712; 4 M. & S. 74, S. C.

session of Lands and Tenements unlawfully holden over by Tenants.”
Dated the — day of —, 1840.

Your's &c.

L. P. (the landlord and lessor of plaintiff,)

[or “ P. A. attorney for the said L. P.”]

[See 2 Chit. Ar. Pr. 778.]

4. *Cognovit, see form of, ante, 372.*

5. *Affidavit to obtain Rule for Bail, &c. where Tenant held under a Lease under Seal.*

In the Q. B. [*or “ C. P.” or “ Exch. of Pleas.”*]

Between *John Doe* on the demise of *L. P.* plaintiff and
Richard Roe, defendant.

L. P. of —, the lessor of the above-named plaintiff, and *P. A.* of —, attorney for the said lessor, severally make oath and say; and first this deponent *L. P.* for himself saith, that this action is brought for the recovery of a messuage, [farm, lands, tenements,] and premises, with the appurtenances, situate in the parish of —, in the county of —, formerly held by *C. D.* as tenant thereof to this deponent, under and by virtue of an indenture of lease, dated &c., and made between this deponent of the one part, and the said *C. D.* of the other part, and whereby this deponent did demise and let the said messuage, [farm, lands, tenements,] and premises, with the appurtenances, to the said *C. D.*, to have and to hold the same to the said *C. D.*, his executors and administrators, from —, for the term of — years, [*let this agree with the lease, concisely,*] which lease [*or “ a counterpart of which lease”*] is now in the possession of this deponent, and ready to be produced to this honourable court. And this deponent further saith, that the said term expired on the — day of — last, and that the said *C. D.* had been possessed of and held the said messuage, [farms, lands, tenements,] and premises, with the appurtenances, under and by virtue of the said lease, from the commencement of the term therein mentioned, until the expiration thereof as aforesaid, and hath continued from thence hitherto to hold, and still doth hold the same. And this deponent *P. A.* for himself saith, (*this need not be the attesting witness to the lease (a),*) that on or about the — day of &c. this deponent was present and did see the said *C. D.* duly sign, seal, deliver, and execute the said lease, and that the name *C. D.* thereunto subscribed as the party executing the same, is of the handwriting of the said *C. D.*, and that the name *P. A.* thereunto subscribed as a witness of the execution thereof is of the proper handwriting of this deponent. And this deponent *D. A.* further saith, that he did, on the — day of — instant [*or “ last”*], being after the expiration of the said term and interest of the said *C. D.* in the said messuage, [farm, lands, tenements,] and premises, personally serve the said *C. D.* with a demand in writing of the possession of the said messuage, [farm, lands, tenements,] and premises, [*if not a personal service, leave out the word “ personally,” and say “ by leaving the same for him with a servant of the said C. D. at his dwelling-house and usual place of abode, situate in*

(a) The execution of the lease need not be sworn to by the attesting witness.
See 2 Chit. Ar. Pr. 779.

—," as the case is:] which said demand was directed to the said C. D., and was and is as follows: [*here copy the demand*], and signed L. P. And this deponent L. P. further saith, that he caused the said C. D. to be served with the said demand as aforesaid, in order that he this deponent might obtain possession of the said messuage, [farm, lands, tenements,] and premises: but the said C. D. hath yet hitherto refused and neglected to deliver up the possession thereof to this deponent, and the said premises have not nor hath any part thereof been delivered up to this deponent or to any person on his behalf. And this deponent P. A. further saith, that he did on [*here state a service of the declaration and notice, as in forms, ante, 362, &c.*]

Sworn [*&c. ante, 207.*]

L. P.

P. A.

[*See 2 Chit. Ar. Pr. 779.*]

6. *The like, where Tenant held from year to year under a written Agreement.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between John Doe on the demise of L. L. plaintiff and Richard Roe, defendant.

L. L. of —, the lessor of the above-named plaintiff, and C. C. of —, gentleman, attorney for the said lessor, severally make oath and say; and first this deponent L. L. for himself saith, that this action is brought for the recovery of a messuage, [farm, lands, tenements,] and premises, with the appurtenances, situate in the parish of —, in the county of —, formerly held by A. B. as tenant thereof from year to year to this deponent, under and by virtue of an agreement in writing, dated &c., and made between this deponent and the said A. B., and whereby this deponent did let [*or "agree to let"*] the said messuage, [farm, lands, tenements,] and premises, with the appurtenances, to the said A. B., to hold the same from —, and so from year to year, [*let this correspond concisely with the agreement,*] which agreement is now in the possession of this deponent, and ready to be produced to this honourable court. And this deponent further saith, that the said A. B. has been possessed of and enjoyed the said messuage, [farm, lands, tenements,] and premises, with the appurtenances, under and by virtue of the said agreement, as tenant from year to year as aforesaid, until the — day of — last [*or "instant"*], when his tenancy as such tenant from year to year was determined by a certain notice to quit in writing, herein-after mentioned; and that the said A. B. hath continued from thence hitherto to hold, and still doth hold, the same. And this deponent C. C. for himself saith, that on the — day of &c. this deponent was present and did see the said A. B. duly sign the said agreement, and that the name A. B. thereunto subscribed as party thereto is of the handwriting of the said A. B.; and that the name C. C. thereunto subscribed as witness thereof is of the proper handwriting of this deponent (s). And this deponent C. C. further saith, that he did, on the — day of — last [*or "instant"*], personally serve the said A. B. with a regular notice to quit the said messuage, [farm, lands, tenements,] and premises, with the appurtenances, at — [*if not a personal service leave out the word "personally," and say "by leaving the same for him at his dwelling-house and usual place of his abode, situate in —,"*]

as the case may be], which said notice to quit was in writing and directed to the said *A. B.*, and was and is as follows [*here copy it*] and signed *L. L.* (a) And this deponent *C. C.* further saith, that he did, on the — day of — last, [personally] serve the said *A. B.* with a demand in writing of the possession of the said messuage, [farm, lands, tenements,] and premises, [*if not a personal service leave out the word "personally," and say "by leaving the same for him with a servant of him the said A. B. at his dwelling-house and usual place of abode, situate in — :"*] which said demand was directed to the said *A. B.* and was and is as follows: [*here copy it*], and signed *L. L.* And the said *L. L.* further saith, that the year of the tenancy aforesaid ended on the [25th day of December]; and that he caused the said notice to quit to be served upon the said *A. B.* as aforesaid, for the purpose of determining the said tenancy on the [25th day of December] last; and that he caused the said *A. B.* to be served with the said demand in writing as aforesaid, in order that he this deponent might obtain possession of the said messuage, [farm, lands, tenements,] and premises; but the said *A. B.* hath yet hitherto neglected and refused to deliver up the possession thereof to this deponent, and the said premises have not nor hath any part thereof been delivered up to this deponent, or to any person on his behalf. And this deponent *C. C.* further saith, that he did, on [&c. *here state a service of the declaration and notice, as in the forms, ante, , &c.*] *L. L.*
C. C.

Sworn [&c. *ante*, 207.]

[See 2 Chit. Ar. Pr. 779.]

7. Indorsement of Motion Paper thereon.

Mr. —. To move for rule, for the tenant *C. D.* to show cause why the said *C. D.*, upon being admitted defendant, besides entering into the common rule, and giving the common undertaking, should not also undertake, in case a verdict shall pass for the plaintiff, to give the plaintiff a judgment, to be entered up against the real defendant, of the term next preceding the time of trial; and also why he should not enter into a recognizance, by himself and two sufficient sureties, in a reasonable sum, conditioned to pay the costs and damages which shall be recovered by the plaintiff in the action, or why in default thereof judgment should not be entered for the plaintiff.

8. Rule nisi thereon, in *Q. B.*

On the — day of —, — Victoria.

Doe on the demise of *L. P.* } Upon reading the affidavit of *L. P.*
v. } and *P. A.*, and the declaration in eject-
Roe. } ment and notice thereunder written, there-
to annexed, and the lease (b) of the premises in question being produced and read, It is ordered, that *C. D.* tenant in possession of the premises in

(a) As to the propriety of setting out the notice to quit, see *Doe d. Topping v. Boast*, 7 Dowl. 487.

(b) This motion must be made on the production of the original, or a counterpart or duplicate, of the lease or agreement, properly stamped; and it is not sufficient to move on a copy or an instrument unstamped at the

time of the motion, though it be stamped after the rule nisi and before cause shown. *Doe d. Caulfield v. Roe*, 3 Bing. N. C. 329; 5 Dowl. 365, S. C. See *Doe d. Holder v. Rushworth*, 4 M. & W. 74; but see *Doe d. Phillips v. Roe*, 1 D. & R. 433, *contra*.

question, upon notice of this rule to be given to him or his attorney, or left for him with some person residing at his dwelling-house, shall upon — show cause why, upon being admitted defendant instead of the casual ejector, besides entering into the common rule, and giving the common undertaking, he should not undertake, in case a verdict shall pass for the plaintiff, to give the plaintiff judgment, to be entered up against him the said *C. D.* of the term next preceding the time of trial; and why he should not enter into a recognizance, by himself and two sufficient sureties, in a reasonable sum, to be fixed by the court, and within such time as the court shall direct, conditioned to pay the costs and damages which shall be recovered by the plaintiff; or why, in default thereof, judgment should not be entered up for the plaintiff, pursuant to the statute of the first Geo. 4, c. 87. Upon the motion of Mr. —.

By the Court.

[See 2 Chit. Ar. Pr. 780.]

9. Affidavit of Service thereof.

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

John Doe on the demise of *L. P. v. Richard Roe*.

C. C. of —, maketh oath and saith, that he this deponent did on the — day of — instant [or “last”] personally serve *C. D.* tenant in possession of the premises in the declaration of ejectment in this cause mentioned, with a true copy of the rule hereunto annexed, [or “did serve *C. D.* tenant in possession of the premises in the declaration of ejectment in this cause mentioned, with a true copy of the rule hereunto annexed, by leaving the same for him with a servant of the said *C. D.* then residing at the dwelling-house of the said *C. D.* situate in the parish of — in the county of —.”]

Sworn [&c. ante, 207.]

C. C.

10. Rule absolute thereon.

On the — day of —, — Victoria.

Doe on the demise of *L. P.*
v.
Roe.

Upon reading the rule made in this cause, on — in this term, the affidavit of *C. C.*, and no cause being shown to the contrary; It is ordered that *C. D.* tenant in possession of the premises in question, upon being admitted defendant instead of the casual ejector, besides entering into the common rule, and giving the common undertaking, do undertake, in case a verdict shall pass for the plaintiff, to give the plaintiff a judgment, to be entered up against him the said *C. D.* of the term next preceding the time of trial; and also that he do, within — days next ensuing, enter into a recognizance, by himself and two sufficient sureties, in the sum of £—, conditioned to pay the costs and damages which shall be recovered by the plaintiff; and that, in default thereof, judgment be entered for the plaintiff, pursuant to the statute of the first Geo. 4, c. 87. Upon the motion of Mr. —.

By the Court.

[See 2 Chit. Ar. Pr. 780.]

11. *Affidavit of Service of, and of Non-compliance therewith.*

[*Proceed as in the form, ante, 404, No. 9, to the end, and then thus:*] And this deponent further saith, that the said C. D. hath not as yet entered into the recognizance in the said rule mentioned, nor undertaken as by the said rule he is directed and ordered.

Sworn [*&c. ante, 207.*]

C. C.

12. *Rule nisi thereon, in C. P.*

In the Common Pleas.

Doe on the demise of L. P. v. Roe.

On the — day of —, — Victoria.

Upon reading the affidavit of L. P. and P. A. and the declaration in ejectment and the notice thereunder written, thereto annexed, and the lease of the premises in question being produced, and upon hearing counsel for the plaintiff; It is ordered that C. D. tenant in possession of the premises in question, upon notice of this rule to be given to him or his attorney, or left for him with some person residing at his dwelling-house, shall show cause to this court, on —, why the said C. D., upon being admitted defendant, besides entering into the common rule, and giving the common undertaking, should not undertake, in case a verdict shall pass for the plaintiff, to give the plaintiff a judgment, to be entered up against the real defendant, of the term next preceding the time of trial; and also why he should not enter into a recognizance, by himself and two sufficient sureties, in a reasonable sum, conditioned to pay the costs and damages which shall be recovered by the plaintiff in the action, pursuant to the statute of the first Geo. 4, c. 87. On the motion of Mr. — for the plaintiff.

By the Court.

13. *Affidavit of Service thereof.*

In the C. P. [*Same as in the form, ante, 404, No. 9.*]

14. *Rule absolute thereon.*

In the Common Pleas.

On the — day of —, — Victoria.

Upon reading the rule made in this cause on —, the — day of —, in this present — term, [*or "in — term last,"*] and also the affidavit of C. C. of the due service of the said rule on C. D., the tenant in possession of parcel of the premises in question, and upon hearing counsel for the plaintiff; It is ordered, that the said C. D., upon being admitted defendant, besides entering into the common rule, and giving the common undertaking, shall undertake, in case a verdict shall pass for the plaintiff, to give the plaintiff a judgment, to be entered up against him the said C. D. of the term next preceding the time of trial; and also that he do, within — days next ensuing, enter into a recognizance, by himself and two sufficient sureties, in the sum of £—, conditioned to pay the costs and damages which shall be recovered by the plaintiff; and that, in default thereof, judgment be entered for the plaintiff, pursuant to the statute of the first Geo. 4, c. 87. And it is further ordered,

that the said *C. D.* do peremptorily within the space of — days from this present day [or “upon the — day of next — term”] give such undertaking, and find such bail, with such conditions and in such manner as are herein above specified in that behalf: And it is also further ordered, that the said *C. D.*, upon notice of this rule to be given to him, shall show cause to this court on —, the — day of — next, in this same term, [or “upon the — day of —, in next — term,”] why, in case he shall neglect or refuse to give such undertaking, and to find such bail, with such conditions and in such manner as above specified, an absolute rule should not be made for entering up judgment for the plaintiff, pursuant to the said statute. On the motion of Mr. —, for the plaintiff.

By the Court.

15. *Affidavit of Service of, and Non-compliance therewith.*

In the Common Pleas.

John Doe on the demise of *L. P. v. Richard Roe*.

[Proceed as in the form, ante, 404, No. 9, to the end, and then thus:] And this deponent further saith, that the said *C. D.* hath not as yet undertaken, as required by the said rule, nor entered into the recognizance mentioned therein.

Sworn [&c. ante, 207.]

C. C.

16. *Rule thereon for Judgment against Casual Ejector.*

In the Common Pleas.

Doe on the demise of *L. P. v. Roe*.

Upon reading a rule made in this cause, on —, the — day of — in this present term, and also the affidavit of *C. C.* of the due service of the said rule, and no cause being shown to the contrary; It is ordered, that judgment be entered up for the plaintiff against the casual ejector, pursuant to the statute of the first Geo. 4, c. 87, for the premises in the declaration of ejectment in this cause mentioned, in the possession of the said *C. D.*, the tenant in possession of the said premises. On the motion of Mr. —, for the plaintiff.

By the Court.

[See 2 Chit. Ar. Pr. 780.]

17. *Recognizance of Bail.*

— term, in the — year of the reign of Queen Victoria.

to wit
(the county in which
the premises are
situate: } *John Doe*, on the demise of *John Davis*, against
Charles Smith.
For recovery of [one messuage,] with the appur-
tenances, in —, in the county of —,

The sureties are,

Recognizance } *B. B.* of —, in the county of —, butcher,
in [£100] by } and
rule of Court. } *T. B.* of —, in the said county, tailor.

D. A.

defendant's attorney.

Taken and acknowledged [&c. see ante, 248, 249.]

[See 2 Chit. Ar. Pr. 780.]

18. *Acknowledgment of Recognizance (a).*

You do jointly and severally undertake, that if you, *Charles Smith*, shall be condemned in this action, you, *Charles Smith*, shall pay the costs and damages which shall be recovered by the plaintiff, or in default of your so doing, that you *A. B.* and *T. B.* will pay the costs and damages for him.

Are you content?

[See 2 Chit. Ar. Pr. 778.]

19. *Notice of Filing of Recognizance.*

Between *John Doe*, on the demise of *John Davis*, plaintiff,
and
Charles Smith, defendant.

Take notice, that the recognizance entered into by the defendant and his sureties, pursuant to a rule of court made in this cause on —, was this day filed with the Hon. Mr. Justice —, at his chambers in Rolls' Garden, London. Dated the — day of —, 1840.

Your's, &c.

To Mr. *P. A.*
Plaintiff's attorney [or "agent."]

D. A.
Defendant's attorney.

[See 2 Chit. Ar. Pr. 778.]

20. *Notice of Exception to the Bail.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Doe dem. Davis v. Smith.

I have excepted to the sureties put in for the defendant in this cause, and require them to justify on oath as sufficient sureties for the said defendant. Dated the — day of —, 1840.

Your's, &c.

To Mr. *D. A.*
Defendant's attorney [or "agent."]

P. A.
Plaintiff's attorney.

[See 2 Chit. Ar. Pr. 778.]

21. *Other Proceedings as to the Bail.*

[Same as in ordinary cases, *mutatis mutandis*; see ante, 246 to 264.]

22. *Recognizance not to commit Waste, &c. where Judge stays Execution.*

You do jointly and severally acknowledge to owe to the plaintiff in this suit the sum of £100, (*the sum named by the judge*), on condition that you, *Charles Smith*, do not commit any waste, or act in the nature of waste, or other wilful damage, or sell or carry off any standing crops, hay, straw, or manure, produced or made on the premises in question in this

(a) The defendant as well as the bail joins in this acknowledgment.

cause, and which may be thereon, from the day on which the verdict was given to the day of final execution of the judgment or setting aside the same, as the case may be. Are you content?

[See 2 Chit. Ar. Pr. 782.]

23. Consent Rule.

[This form is the same as the form, ante, 369, inserting these words: "The said C. D. hereby undertaking that, in case a verdict shall pass herein for the plaintiff, the plaintiff shall have judgment of the term next preceding the time of the trial hereof."]

24. The Issue.

[Proceed as in the forms, ante, 378, &c. to the award of the venire exclusive, stating the name of the real tenant for that of Richard Roe, and then thus:] Therefore as well to try the issue above joined between the parties, as also in case the said issue shall be found for the said John Doe, to inquire of and assess the damages which the said John Doe hath sustained on occasion of the said trespass and ejectment [or "trespasses and ejectments"], that is to say, for the mesne profits of the said premises, which have or might have accrued from the day of the expiration [or "determination"] of the said C. D.'s interest in the same, down to the time of giving the verdict in this cause, to some preceding day, according to the form of the statute in such case made and provided, the sheriff is commanded that he cause to come [&c. see the award of the venire, ante, 378, 379: See forms of notice of trial, ante, 56.]

[See 2 Chit. Ar. Pr. 781.]

25. Nisi Prius Recordi

[See the forms, ante, 379, 380.]

26. Jury Process.

[Proceed as in the forms, as ante, 68, but instead of the words "in an action on the case, &c." say] as well to try the issue joined between them, of a plea of trespass and ejectment, as also in case the said issue shall be found for the said John Doe, to inquire of and assess the damages which the said John Doe hath sustained on occasion of the said trespass and ejectment [or "trespasses and ejectments"], that is to say, for the mesne profits of the said premises, which have or might have accrued from the day of the expiration [or "determination"] of the said C. D.'s interest in the same, down to the time of giving the verdict in this cause, or to some preceding day, according to the form of the statute in such case made and provided, the sheriff is commanded that he cause to come [&c. continuing the jury process to the end, as in forms, ante, 68.]

27. Postea, &c. on a Nonsuit.

[Proceed as in the forms, ante, 87, but in the judgment, instead of "for his costs and charges by him about his defence in this behalf laid out and expended," say "for his double costs in this behalf."]

[See 2 Chit. Ar. Pr. 781.]

28. *Postea, &c. on a Verdict for Defendant.*

[Proceed as in the forms, ante, 383, No. 63 ; 385, No. 70 ; but in the judgment, instead of "for his costs and charges by him about his defence in this behalf laid out and expended," say "for his double costs in this behalf."]

[See 2 Chit. Ar. Pr. 781.]

29. *Postea for Plaintiff where Defendant appeared at Trial.*

[Proceed as in the form, ante, 92, No. 1, to the asterisk *, and then thus:] say upon their oath, that the said C. D. is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said John Doe hath within complained against him ; and they assess the damages of the said John Doe by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to one shilling, and for those costs and charges to 40s. And it appearing in evidence to the jurors aforesaid, that this action was brought by and at the suit of the said L. P. as landlord of the within-mentioned tenements with the appurtenances, against the said C. D. as his tenant thereof, under a lease [or "agreement"] in writing, for the term of — years [or "from year to year"], and that the attorney of the said C. D. hath been served with due notice of trial in the said action, they assess the damages of the said L. P. on occasion of the said trespass and ejectment, according to the form of the statute in such case made and provided, that is to say, for the mesne profits of the said tenements with the appurtenances, from the — day of —, 1840, being the day of the expiration [or "determination"] of the said C. D.'s interest in the said tenements, with the appurtenances, down to the time of giving their verdict in this action [or "to the — day of — last, when the said C. D. quitted and delivered up the possession of the said tenements, with the appurtenances, to the said L. P."], to £— over and above the said costs and charges of the said John Doe by him about his suit in this behalf expended. Therefore &c.

[If the defendant did not appear, see form, ante, 381, No. 58.]

30. [The Judgment in this case is the same as usual, see ante, 384, &c. The Writs of Execution are nearly the same as usual, see ante, 387 &c.]

31. *Fieri Facias in Q. B. for Damages and Costs where the Judge at the Assizes certified for immediate execution.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting : Whereas, at the assizes holden at —, in and for the county of —, on the — day of — last, a certain action of ejectment, then pending in our court before us, wherein Richard Roe, on the demise of J. M. P. Esq., was plaintiff and C. D. was defendant, came on for trial before the Honourable Sir J. T. C., knight, one of the justices assigned to hold pleas in our court before us, and one of the justices assigned to take the assizes in and for the said county, according to the form of the statute in such case made and provided, upon which the jury found a verdict for the said Richard Roe, and assessed the damages of the said Richard Roe, on occasion of the trespass and ejectment in the said declaration mentioned, at 1s, over and above his costs and charges by him about his suit in that behalf expended, and

for those costs and charges at 40s.: And it appearing in evidence to the jurors aforesaid, that the said action was brought by and at the suit of *J. M. P.*, esquire, as landlord of the tenements in the declaration in the said action mentioned, with the appurtenances, against the said *C. D.* as his tenant thereof, and that the interest of the said *C. D.* in the said tenements expired before the commencement of the said action: and that the attorney of the said *C. D.* had been served with due notice of trial in the said action, the said jury did assess the damages of the said *J. M. P.*, on occasion of the said trespass and ejectment, according to the form of the statute in such case made and provided; that is to say, for the mesne profits of the said tenements, with the appurtenances, from the day of the expiration of the said *C. D.*'s interest in the said tenements, with the appurtenances, down to the time of their giving their verdict in the said action, to £138, over and above the said damages, costs, and charges by them in manner and form aforesaid assessed: And thereupon the said judge, according to the form of the statute in such case made and provided, certified on the back of the record that in his opinion execution ought to issue forthwith for the sum found by the said verdict: And judgment was thereupon, on the — day of — last, duly signed and recovered against the said *C. D.* in our said court in the said action for the said sums of 1s., 40s., and £138, and also for £48 and 9s., for the costs and charges of the said *Richard Roe*, by him about his suit in that behalf expended by the said court then and there adjudged of increase to the said *Richard Roe*, and with his assent, all which said sums of money amount together to £188 : 10s., whereof the said *C. D.* is convicted, as appears to us of record; therefore we command you, that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made the said sum of £188 : 10s. together with interest on the said sum of £188 : 10s., at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up [*or if entered up before 1st Oct. 1838, say "from the 1st day of Oct. A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*], and that you have that money, together with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said *Richard Roe*, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, and have there then this writ. Witness Thomas Lord Denman, at Westminster, the — day of —, in the year of our Lord —.

SECTION V.

PROCEEDINGS IN EJECTMENT BY LANDLORD AGAINST TENANT, UNDER 11 GEO. 4 & 1 WILL. 4, c. 70, s. 36.

1. Declaration by Original, in Q. B. or C. P.

In the Queen's Bench [*or "Common Pleas."*]

On — the — day of —, (*the day next after the day of demise stated in the declaration,*) in the — year of the reign of Queen Victoria.

— (to wit.) *Richard Roe* was attached to answer *John Doe* of a

plea [&c. as in a common declaration in ejectment, to the end. See the forms, ante, 359, &c. but instead of the usual notice, substitute the following:]

Mr. C. D. (*the tenant or tenants in actual possession.*)

I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you, by some attorney of her majesty's Court of Queen's Bench [or "Common Pleas"] at Westminster, to appear and plead in the said court within ten days from the receipt hereof, and then and there by rule of the same court to cause yourself to be made defendant [or "defendants"] in my stead, and within the time aforesaid to plead to the said declaration, otherwise I shall suffer judgment herein to be entered against me by default, and you will be turned out of possession. Dated this — day of —, 1840.

Your's, &c.

Richard Roe.

[See 2 Chit. Ar. Pr. 784.]

2. The like in Exchequer, by Bill.

[The declaration is the same as ante, 361, except in entitling the declaration specially, as in the preceding form. The notice to appear is the same as in that form, except in stating the appearance to be in "the Office of Pleas of her majesty's court of Exchequer of Pleas."]

3. Affidavit of Service &c. to entitle Plaintiff to Judgment against Casual Ejector.

In the Q. B. [or "C. P. or "Exch. of Pleas."]

Between John Doe on the demise of L. P. plaintiff,
and

Richard Roe, defendant.

P. A. of —, gentleman, maketh oath and saith, that he did on [&c. here state the service of the declaration as in other cases, see the forms, ante, 362, &c.:] And this deponent further saith, that the said C. D. (*the tenant*) previous to the said service of the said declaration, rented and occupied the said premises in the said declaration mentioned, as tenant thereof to the said L. P. (*the lessor*) under a lease for seven years, commencing from —; which said lease contained the usual covenants and conditions, and a proviso for a forfeiture and a re-entry, and especially a proviso for forfeiture and right of the said L. P. to re-enter and retake possession of the said premises in case of a breach of any of such covenants or conditions; and this deponent hath been informed by —, and verily believes that the said C. D. hath committed a breach of the said covenants and conditions by his not paying rent and not repairing the said premises, and thereby the said term hath become forfeited, and a right of re-entry upon the said premises accrued to the said L. P. on the — day of — last [or "instant."] [If the tenancy has expired by effluxion of time or notice to quit, then the preceding form must of course be altered accordingly.] But that the said C. D. hath refused and still doth refuse to give up the possession of the said premises, and wrongfully withholds that possession from the said L. P.

Sworn [&c. ante, 207.]

P. A.

[See 2 Chit. Ar. Pr. 784.]

4. *Appearance and Plea.*[*Same as ante, 371.*]5. *Notice of Trial.*[*Same as ante, 50, except that six clear days' notice will suffice.*]6. *Issue, by Original, in Q. B. or C. P.*[*Same as usual in ejectment, as ante, 378, except that it is to be headed with the special title.*]7. *The like by Bill, in Q. B.*As yet of — term (*the term of which issue is joined*),
in the — year of the reign of Queen Victoria.

— (to wit.) Be it remembered, that on — the — day of —
(*the day next after day of demise in declaration*), in the — year of the
reign of our lady the queen, *John Doe* brought into the office of the
masters of the court of our said lady the queen, before the queen herself,
according to the form of the statute in such case made and provided, his
certain bill against *C. D.*, being in the custody of the marshal of the
marshalsea of our said lady the queen, before the queen herself, of a plea
of trespass and ejectment, and filed the said bill in the said office; which
said bill was and is entitled on the said — day of —, in the —
year aforesaid, and follows in these words, (that is to say,) — to wit,
John Doe complains of *C. D.*, being &c. [*as in the usual form. See ante*
378.]

8. *The like, in Exchequer.*[*A form may be readily framed from the preceding one, and the usual
ejectment form, ante, 379.*]9. *Other Proceedings.*[*The other proceedings are nearly the same as in ordinary cases of eject-
ment, except as to the title of declaration.*]

CHAPTER II.

DISTRESS AND REPLEVIN.

SECT. I.—*The Distress.*
II.—*The Replevin.*

SECT. I.—THE DISTRESS.

1. *Warrant to Distrain for Rent.*

To Mr. B. B. my bailiff.

I do hereby authorize and require you to distrain the goods and chattels in and upon the dwelling-house [or "farm," or "lands"] and premises of A. B. in the parish of —, in the county of —, for £—, being — years' rent due to me for the same, at — last; and to proceed thereon for the recovery of the said rent as the law directs. Dated the — day of —, A. D. —.

Yours, &c.

C. D.

2. *Inventory of Goods distrained.*

An inventory of the [cattle,] goods and chattels distrained by me C. D. [or "B. B. as bailiff to Mr. C. D."] this — day of —, in the year of our Lord 1840, in the dwelling-house [or "farm," or "lands"] and premises of A. B. situate in the parish of —, in the county of —, [if distress made as bailiff, say "by the authority and on the behalf of the said C. D."] for the sum of —, being — years' rent due to me [or "to the said C. D."] at — last.

In the dwelling-house.

In the kitchen, one table [&c. setting out the goods fully.]

3. *Notice of Distress.*

Mr. A. B.

Take notice, that I have this day distrained [or "that I, as bailiff to Mr. C. D. your landlord, have this day distrained"], on the premises above mentioned, the [cattle,] goods, and chattels specified in the above inventory, for the sum of £—, being — years' rent due to me [or "to the said C. D."] at — last, for the said premises; and that unless you pay the said rent, with the charges of distraining for the same, within five days from the date hereof, the said [cattle,] goods, and chattels will be appraised and sold, according to law. [If you remove the goods, state the place where they are removed to.] Given under my hand, this — day of —, 1840.

Witness W. W.

C. D.

4. *The like, for Arrears of Rent-charge.*

Mr. A. B.

Take notice, that by the order and on the behalf of C. D. I have this day taken and distrained, in and upon the farm and lands called —, in your possession, in the parish of —, in the county of —, all the corn, grain, and effects, in the inventory hereunder written mentioned, for the sum of £—, being [one] year's annuity or rent-charge of £— per annum, due to the said C. D. at [Michaelmas] last, and charged on, and issuing and payable out of, certain manors, farms, lands, and premises called —, in the said parish of —, in the county of — aforesaid, of which the farm and lands first above mentioned are part and parcel; and that unless the said arrears of the said annuity or rent-charge, together with the expenses of this distress, are paid and satisfied, the said corn, grain, and effects will be disposed of according to law. Dated this — day of — 1840.

B. B.

To Mr. A. B. and all whom it may concern.

5. *The like, for Growing Crops, on 11 Geo. 2, c. 19, s. 8.*

Mr. A. B.

Take notice, that I have this day taken and distrained, [or “that I, as bailiff to Mr. C. D. your landlord, have taken and distrained,”] on the lands and premises above mentioned, the several growing crops specified in the inventory, for the sum of —, being [two] quarters' rent due to me [or “to the said C. D.”] at [Michaelmas] last, for the said lands and premises; and unless you previously pay the said rent, with the charges of distraining for the same, I shall proceed to cut, gather, make, cure, carry, and lay up the crops, when ripe, in the barn, or other proper place on the said premises, and in convenient time sell and dispose of the same, towards satisfaction of the said rent, and of the charges of such distress, appraisement, and sale, according to the form of the statute in such case made and provided. Given under my hand, this — day of —, 1840.

C. D.

6. *Memorandum of Tenant's Consent to Landlord's continuing in Possession.*

Mr. C. D.

I hereby desire you will keep possession of my goods, which you have this day distrained for rent due [or “alleged to be due”] from me to you, in the place where they now are, being in the [— room on the — floor of the] house, No. —, — Street, in the county of —, [being the premises where the distress was made,] for the space of — days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time, to enable me to discharge the said rent: And I will pay the man for keeping the said possession. Witness my hand, this — day of —, in the year of our Lord 1840.

A. B.

Witness, W. W.

[See 2 Chit. Ar. Pr. 789.]

7. *Appraiser's Oath.*

You and each of you shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your judgment. So help you God.

8. *Memorandum thereof.*

Memorandum: That on &c. C. D. of —, and E. F. of —, two sworn appraisers, were sworn upon [the Holy Evangelists] by me C. C. of —, constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their judgment.

As witness my hand,
C. C. constable.

Present at the time of swearing,
the said C. D. and E. F., as } W. W.
above, and witness thereto. } T. W.

9. *The Appraisement.*

We, the above-named C. D. and E. F., being duly sworn upon the Holy Evangelists, by G. H. constable above-named, well and truly to appraise the [cattle,] goods, and chattels mentioned in this inventory, according to the best of our judgment, and having viewed the said goods and chattels, do appraise and value the same at the sum of —. As witness our hands, this — day of —, 1840.

[See 2 Chit. Ar. Pr. 790.] C. D. } Sworn
E. F. } Appraisers.

SECTION II.—REPLEVIN.

1. *Writ of Replevin.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you, that justly and without delay you cause to be replevied to A. B. his cattle, goods, and chattels, which C. D. hath taken and unjustly detaineth, as he saith; and afterwards cause him to be brought to justice for the same, that we hear no more complaint for want of justice. Witness ourself at Westminster, the — day of —, in the — year of our reign.

2. *Deputation, to grant Replevin.*

Know all men by these presents, that I, S. S. esq. high sheriff of the county [or "county palatine"] of —, do hereby appoint I. K. gent. one of the deputies for making or granting replevins within the said county, pursuant to the statute in that case made and provided; and for so doing this shall be a sufficient warrant and authority. Given under the seal of my office of sheriff, the — day of —, 1840.

By the same sheriff.

3. *Replevin Bond.*

Know all men by these presents, that we, A. B. of —, P. P. of —, and D. P. of —, are jointly and severally held and firmly bound to S. S. esq. sheriff of the county of —, in the sum of — (a sufficient sum to cover the value of the cattle or goods distrained, if taken damage feasant; or for rent, then double the value of the cattle or goods taken, to

be ascertained on the oath of one witness), of lawful money of Great Britain, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns: for which payment, to be well and truly made, we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this — day of —, A. D. 1840.

The condition of this obligation is such, that if the above-bounden *A. B.* do appear at the next county court to be holden for the county of —, at —, on the — day of — next, and do then and there prosecute his suit with effect and without delay, against *C. D.* for the taking and unjustly detaining of his cattle, goods, and chattels to wit [*state the cattle and goods distrained*], and do make return of the said cattle, goods, and chattels, if a return thereof shall be adjudged: that then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

Sealed &c.

[See 2 Chit. Ar. Pr. 792.]

A. B. (L. S.)
P. P. (L. S.)
D. R. (L. S.)

4. Assignment thereof.

Know all men by these presents, that I, *S. S.* esq. sheriff of the county of —, have at the request of the within-named *C. D.*, the avowant [*or "person making cognizance"*] in this cause, assigned over this replevin bond unto him the said *C. D.* pursuant to the statute in such case made and provided. In witness whereof I have hereunto set my hand and seal of office, [*or if late sheriff, say "seal" only,*] this — day of —, 1840.

S. S. (L. S.)

[See 2 Chit. Ar. Pr. 794, 810.]

5. Warrant to replevy.

— to wit: *S. S.* esq. sheriff of the county of —, to — and —, my bailiffs, and to every of them, jointly and severally, greeting: Whereas *A. B.* hath found me sufficient security, as well for prosecuting his suit with effect against *C. C.* for taking and unjustly detaining his cattle, goods, and chattels, to wit [*&c. set out the cattle and goods,*] which the said *C. C.* hath taken and unjustly detains, as it is said, as also for making return thereof, if return thereof shall be adjudged; therefore on behalf of the said *A. B.* I command you, and every of you, jointly and severally, that without delay you replevy, and cause to be delivered to the said *A. B.* his said cattle, goods, and chattels; and that you immediately summon the said *C. C.* to appear at my next county court, to be holden at —, in and for the said county, to answer the said *A. B.* in the plea aforesaid; and in what manner you shall have executed this precept, certify to me at my said next county court, to be holden at the time and place aforesaid, under the peril attending the neglect thereof. Given under the seal of my office, this — day of — A. D. 1840.

By the sheriff.

[*Or if granted by a deputy, say "By —, one of the deputies of the said sheriff, according to the form of the statute," or "by —, one of the replevinors appointed by the said sheriff."*]

[See 2 Chit. Ar. Pr. 793.]

6. Summons thereon.

to wit: By virtue of a warrant by the sheriff of the county aforesaid to me in this behalf directed, I summon you to be and appear at the next county court, to be holden for the county aforesaid, at _____, in the said county, to answer A. B. in a plea of taking and unjustly detaining his [cattle,] goods, and chattels. Dated this _____ day of _____, A.D. 1840.

To Mr. C. C. _____ E. F. bailiff.

7. The Complaint in County Court.

County Court.

The _____ day of _____ A.D. _____.

— to wit: *A. B.* complains of *C. C.* in a plea of taking the [cattle,] goods, and chattels, to wit, [enumerate them,] of the said *A. B.* and unjustly detaining the same, against gages and pledges, &c.

Pledges to prosecute { *John Doe,*
Richard Roe.

[See 2 Chit.-Ar. Pr. 793, 794.]

8. *Precept, in Nature of a Withernam, on a Complaint.*

— to wit: S. S., esq. high sheriff of the said county, to all and singular my bailiffs of the said county, greeting: Whereas A. B. hath found me sufficient security, as well to prosecute his plaint against C. C. for taking and unjustly detaining his [cattle,] goods, and chattels, to wit, [*&c. set out the cattle and goods,*] as to make return thereof, if return thereof shall be awarded; and thereupon, by virtue of my office, I have often commanded you, and every of you, that you or some or one of you should cause to be replevied by the said A. B. his aforesaid cattle, goods, and chattels, which the said C. C. hath taken and unjustly detains, as it is said: And you, upon my several precepts of replevin to you directed, have certified that the [cattle,] goods, and chattels aforesaid are eloigned to places to you unknown, so that you cannot replevy the same to the said A. B. Therefore I now command you, and every of you, that you or some or one of you do take in withernain the [cattle,] goods, and chattels of the said C. C. to the value of the said [cattle,] goods, and chattels so eloigned as aforesaid, and deliver the same to the said A. B. for his [cattle,] goods, and chattels last aforesaid; and also that you put by gages and safe pledges the said C. C. so that he be and appear at my next county court, to be holden at —, in and for the said county, on the — day of — next, to answer to the said A. B. of the plea aforesaid: and that you or one of you return an answer to this my mandate, at my said next county court. Given under the seal of my office, this — day of —, A.D. 1840.

[See 2 Chit. Ar. Pr. 794.]

9. Writ de Proprietate probandá.

Victoria, [*&c. ante*, 415, No. 1,] to the sheriff of —, greeting: Whereas we have often commanded you, that justly and without delay you should cause to be replevied to A. B. the [cattle,] goods, and chattels of his which C. C. hath taken and unjustly detaineth, as he saith, or that

you would signify to us the cause why you would not or could not execute our command formerly directed to you therein: And for that the said C. C. doth avouch the said cattle, goods, and chattels, to be his own proper cattle, goods, and chattels, you could not replevy the same to the said A. B. as you have signified to us: We, not willing that the said A. B. should be defrauded of his cattle, goods, and chattels, by such false avouchment, whereby the said cattle, goods, and chattels, if they belong to him, cannot be replevied to him, according to the law and custom of England, command you, that taking with you the keeper of the public pleas, in the presence of the said C. C. if he will be present, and he will hereupon be by you warned, you diligently inquire, by the oath of honest and lawful men of your county, by whom the truth of the matter may be best known, whether the [cattle,] goods, and chattels so taken and detained be the [cattle,] goods, and chattels of the said A. B. or of the said C. C. And if by such inquisition it may appear to you, that the said [cattle,] goods, and chattels be the [cattle,] goods, and chattels of the said A. B. then you shall cause the same to be replevied to the said A. B. according to the tenor of our said commands therein formerly directed unto you: And nevertheless, if the said A. B. shall give you security to prosecute his suit, then attach the said C. C. so that you may have him before us on —, wheresoever we shall then be in England, to answer us for the contempt done in this behalf, and the said A. B. for the damages which he hath sustained by reason of the avouchment of the said [cattle,] goods, and chattels, and have you there this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 795.]

10. Declaration in County Court (a).

In the County Court of —.

The — day of —, A. D. —.

— to wit: C. D. was summoned to answer A. B. of a plea wherefore he took the [cattle,] goods, and chattels of the said A. B. and unjustly detained the same against gages and pledges, until &c.; and thereupon the said A. B. by P. A. his attorney, complains that the said defendant, on the —, day of —, in the year of our Lord 18—, at the parish of —, in the county of —, and within the jurisdiction of this court, in a certain dwelling-house, [see the form, post,] there, took the [cattle,] goods, and chattels, to wit, [&c. [state them] of the plaintiff, of the value, to wit, of £—, and there unjustly detained the same against gages and pledges, until &c.; wherefore the said plaintiff saith that he is injured, and hath sustained damage to the value of £—, and therefore he brings his suit &c.

11. *Præcipe either for a Pone or for Recordari Facias Loquela*m.

— to wit: Pone [or “recordari facias loquela”] for A. B. plaintiff. [or “C. C. defendant,”] of a plaint between A. B. and C. C. for taking and unjustly detaining the [cattle,] goods, and chattels of the said A. B.

(a) See a form of judgment of non pros. for not declaring in county court, Tidd's Forms, 574. Also a like form, with a continuance by dies datus, id.

575. Also a form of a precept of retorno habendo, in county court, on a judgment of non pros. for want of a plea in bar, id. 576.

Returnable before our lady the queen on —, wheresoever &c. [or in C. P. "returnable before her majesty's justices at Westminster, on —."]]

The next county court day
will be on &c. next.

P. A. attorney,
—, 1840.

[See 2 Chit. Ar. Pr. 795.]

12. *Pone for Plaintiff.*

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: At the request of the plaintiff, put before us on —, wheresoever we shall then be in England, [or in C. P. "before our justices at Westminster, on —," or in *Exch.* "before the barons of our Exchequer at Westminster, on —,"] the plaint which is in your county, by our writ, between A. B. and C. C. of the [cattle,] goods, and chattels of the said A. B. taken and unjustly detained, as it is said; and summon by good summoners, the said C. C. that he be then there, to answer the said A. B. thereupon; and have there the summoners, and this writ and the other writ. Witness ourself at Westminster, the — day of —, in the year of our Lord —.

13. *The like, for Defendant.*

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: Put before us, on —, wheresoever we shall then be in England, [or in C. P. "before our justices at Westminster, on —," or in *Exch.* "before the barons of our Exchequer at Westminster, on —,"] the plaint which is in your county, by our writ, between A. B. and C. C. of the [cattle,] goods, and chattels of the said A. B. taken and unjustly detained, as it is said; and apprise the said A. B. that he may be there, if he will, to prosecute his plaint aforesaid against the said C. C.; and have there this writ and the other writ. Witness ourself at Westminster, the — day of —, in the year of our Lord —. Because the said C. C. hath taken the said [cattle,] goods, and chattels in his lienage, as it is said, let this writ be executed if the cause be true and the said C. C. desire it, otherwise not.

[See 2 Chit. Ar. Pr. 795.]

14. *Recordari Facias Loquelam, for the Plaintiff (a).*

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: We command you, that in your full county court you cause the plaint to be recorded which is in the same county, without our writ, between A. B. and C. C. of the [cattle,] goods, and chattels of the said A. B. taken and unjustly detained, as it is said; and that you have the said record before us, on —, wheresoever we shall then be in England, [or in C. P. "before our justices at Westminster, on —," or in *Exch.* "before the barons of our Exchequer at Westminster, on —,"] under our seal, and the seals of four lawful knights of the same county, of those who were present at the said recording; and that you prefix the same day to the parties,

(a) The removal of proceedings by writ of certiorari is so rarely adopted, (see 2 Chit. Ar. Pr. 795, 796,) that

it is not deemed worth while to insert forms relative thereto. See the forms in Tidd's Forms, 376.

Replevin.

... the said ... it proceed in that plaint as shall be just; and that ...
... the ... of the said four knights, and this writ. Wit-
... at ... the ... day of ..., in the year of our
... Let this writ be executed, if the aforesaid A. B. require it,
...
[See 2 Chit. Ar. Pr. 795, 796.]

15. The like, for Defendant.

As in the preceding form to the asterisk*, and then thus:] Because the
aforesaid C. D. in ... pleading affirms that he himself took the cattle
aforesaid in his separate soil, as in his damage there, in which soil indeed
aforesaid A. B. claims to have common of pasture, as it is said; which
plaint, for that it toucheth the freehold (as is aforesaid) in the same
ty, ought not, according to the law and custom of our kingdom, to
pleaded without our writ. Let execution of this writ be done, if the
be true, and the aforesaid C. D. requires this.
[See 2 Chit. Ar. Pr. 795, 796.]

16. Summons thereon.

To ... and ..., my bailiffs.
Summon A. B. and C. D. that they severally be before
the queen on ..., wheresoever our said lady the queen shall
be in England, (or in C. P. "before the justices of our said lady the
queen at Westminster, on ..." or in Erc. "before the barons of her
majesty's Exchequer at Westminster,") to proceed in a certain plaint be-
tween the said A. B. and C. D. of the [cattle,] goods, and chattels of the
said A. B. taken and unjustly detained, as it is said, as shall be just
in the year of ... 1840.
S. S. sheriff.

17. Return thereof.

... in my full county court held at
... I have caused the plaint to be recorded,
... the writ of our said lady the queen,
... goods, and chattels of the said
... which said plaint appears
... I have the said record be-
fore the justices of our said
barons of her majesty's Ex-
chequer, under my seal and
four brethren knights of the same
... and I have prefixed
... ready to proceed
...
... of S. S. sheriff

...
... S. S. sheriff of the
... the ... day

of &c. before *E. E.*, *F. F.*, *G. G.*, and *H. H.*, freeholders of the same county, it is (amongst other things) entered as follows, to wit: *A. B.* complains [&c. proceed as in the *plaint*, ante, 417, No. 7.] And at the full [or "—"] county court of the said sheriff, holden at —, in and for the same county, the — day of &c., in the year aforesaid, before *E. E.*, *F. F.*, &c. four freeholders of the same county, the said *plaint* between the parties aforesaid was recorded, as by the writ hereunto annexed was required. In testimony whereof, as well we the said sheriff, as the said *E. E.*, &c. who were present at the said record, have hereunto respectively put our seals, on the day and year and at the place above-mentioned.

By the same sheriff (l. s.)

E. E. (l. s.)

F. F. (l. s.)

&c.

[See 2 Chit. Ar. Pr. 800.]

19. Entry of *Re. Fa. Lo.* on Record.

As yet of — term, in the — year of the reign of Queen Victoria.

Witness (*chief justice's name.*)

Roll, No. —.

— (to wit.) Our lady the queen sent to her sheriff of — her writ close in these words, to wit: *Victoria* [&c. copy the *re. fa. lo.*] At which day comes here the said *A. B.* in his proper person, and the said *C. D.* appears by — his attorney; and the sheriff, to wit, —, sheriff of — aforesaid, now here returns, that he has caused the said *plaint*, which was in his court, to be recorded between the said parties; which *plaint* appears in a schedule thereto annexed; and that he had the said record ready, at the day and place in the writ mentioned; and that he had prefixed that day to the parties aforesaid, that they be then there, to proceed in the said *plaint*, as shall be just. [*Here copy the schedule.*]

[See 2 Chit. Ar. Pr. 796.]

20. Notice of filing *Recordari* &c. and Demand of Declaration in *Q. B.* In the Queen's Bench.

A. B. plaintiff and *C. D.* defendant.

The defendant having sued out a writ of *recordari facias loquelam*, directed to the sheriff of —, for removing the above cause out of the county court of —, into the Court of *Q. B.*, returnable on — last past, I do hereby give you notice, that the said defendant has filed the said writ, and the return thereof, with the masters of the Court of *Q. B.*, and hath entered his appearance in the said cause with the said masters; and that you are required to declare in the said cause, otherwise the defendant will sign a judgment of non-pros. Dated this — day of —, A.D. 1840.

Your's, &c.

To Mr. *P. A.* plaintiff's attorney

D. A. defendant's attorney

[or "agent."]

[or "agent."]

[See 2 Chit. Ar. Pr. 796.]

21. *Procedendo* where *Recordari* not returned or filed in time.

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: Whereas a *plaint*, which was in your county without our writ between

A. B. and *C. D.*, of the [cattle,] goods and chattels of the said *A. B.*, taken and unjustly detained, as it was said, by certain dilatory cavils and exceptions, unjustly suggested on behalf of the said *C. D.*, hath been long delayed in the said county, to the great damage and grievance of the said *A. B.*, we command you, that you proceed in that plaint as far as with justice you may, and cause full and speedy justice to be done to the said *A. B.* in the said plaint, that no further complaint come to us. Witness ourself at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 796.]

22. *The like, in another form, where Recordari not returned.*

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: Although we lately commanded you, [recite from the *re. fa. lo.* to the end, exclusive of the teste, thus:] that in your full county court you should cause the plaint to be recorded, which was in the same county without our writ, between *A. B.* and *C. D.*, of the [cattle,] goods and chattels of the said *A. B.*, taken and unjustly detained, as it was said, and that you should have the said record in our court before us, on —, wheresoever we should then be in England, [or in *C. P.* “before our justices of the bench at Westminster, on —,” or in *Exch.* “before the barons of our Exchequer at Westminster, on —,”] under your seal and the seals of four lawful knights of the same county, of such as should be present at the said record; and that you should prefix the same day to the parties, that they might then be there ready to proceed in the same plaint as should be just; and that you should have there the names of the said four knights and that writ: Yet we, being now moved with certain causes in our said court, command you, that in the same plaint against the said *C. D.* at the suit of the said *A. B.* before you levied or affirmed, and now depending undetermined, you proceed at your next county court to be holden in and for the same county, with what speed you can, in such manner, according to the law and custom of England, as you shall see proper: our said writ in that behalf heretofore to you directed to the contrary in anywise notwithstanding. Witness ourself at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 796.]

23. *Memorandum for Rule to appear.*

<p><i>C. D.</i> } <i>v.</i> <i>A. B.</i> }</p>	<p>Rule to appear on recordari facias loquellam. <i>P. A.</i> plaintiff's attorney [or “agent.”] —, 1840.</p>
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[See 2 Chit. Ar. Pr. 796, 797.]

24. *Rule to appear on Re. Fa. Lo. brought by Plaintiff.*

<p>Rule to appear, on recordari facias loquellam. <i>P. A.</i> plaintiff's attorney [or “agent.”] —, 1840.</p>	<p><i>B.</i> against <i>D.</i></p>
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25. *Præcipe for Appearance of Defendant.*

—— (to wit.) Appearance of *C. D.* at the suit of *A. B.* to a [*recor- dari facias loquelam*] returnable on ——.

D. A. defendant's attorney.
——, 1840.

[*See 2 Chit. Ar. Pr. 797.*]

26. *Pone per Vadios, against Defendant for not appearing.*

Victoria, [*&c. ante, 415, No. 1,*] to the sheriff of ——, greeting: Put by sureties and safe pledges *C. D.*, late of ——, labourer, that he be before us on ——, wheresoever we shall then be in England, [*or in C. P. "before our justices at Westminster, on ——," or in Erch. "before the barons of our Exchequer at Westminster, on ——,"*] to answer *A. B.* of a plea wherefore he took the [cattle,] goods and chattels of the said *A. B.*, and unjustly detained them against gages and pledges, as he saith, and to show wherefore he hath not appeared in our court before us [*or in C. P. "before our justices at Westminster," or in Erch. "before the barons of our Exchequer at Westminster"*] on —— last past, as that day was prefixed to him; and have you there the names of the pledges and this writ. Witness (*name of chief justice or chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

[*See 2 Chit. Ar. Pr. 797.*]

27. *Summons thereon.*

To *B. B.* and *F. B.* my bailiffs.

—— (to wit.) Summon *E. E.* that he be before our lady the queen on ——, wheresoever our said lady the queen shall then be in England, [*or in C. P. "before the justices of our said lady the queen at Westminster on ——," or in Erch. "before the barons of her majesty's Exchequer at Westminster,"*] to answer to *A. B.* of *&c.* [*as in the last*], as that day was prefixed to him. Dated this —— day of ——, 1840.

S. S. esquire, sheriff.

28. *Distringas thereon.*

Victoria, [*&c. as ante, 415, No. 1,*] to the sheriff of ——, greeting: We command you, that you distrain *E. E.* late of ——, tailor, by all his lands and chattels in your bailiwick, so that neither he nor any for him do intermeddle therewith, until you shall have other command in that behalf from us, and that you answer us for the issues of the same, so that he be before us on ——, wheresoever we shall then be in England, [*or in C. P. "before our justices at Westminster, on ——," or in Erch. "before the barons of our Exchequer at Westminster, on ——,"*] to answer *A. B.* of a plea wherefore he took the [cattle,] goods and chattels of the said *A. B.*, and unjustly detained them against gages and pledges, as he saith; and to hear judgment thereupon for his many defaults: and have you there this writ. Witness —— (*name of chief justice or chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

[*See 2 Chit. Ar. Pr. 797.*]

29. *Alias and Pluries Distringas.*

[This form is as the last, except that after the words, "We command you," insert the words, "as before we have commanded you," or if a pluries, "as oftentimes we have commanded you, that you distrain &c."]

[See 2 Chit. Ar. Pr. 797, 798.]

30. *Capias.*

Victoria, [&c. as ante, 415, No. 1,] to the sheriff of —, greeting: We command you that you take C. D. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us on —, wheresoever we shall then be in England, [or in C. P. "before our justices at Westminster, on —," or in Exch. "before the barons of our Exchequer at Westminster, on —,"] to answer A. B. of a plea wherefore, &c. [as in the preceding writ to the words, "as it is said"]; and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 798.]

31. *Writ of Accedas ad Curiam.*

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: We command you that, taking with you four discreet and lawful men [or "knights"] of your county, you go in person to the court of —, (name of court,) and in court there you cause the plaint to be recorded, which is in that court without our writ, between A. B. and C. D. of the [cattle,] goods, and chattels, of the said A. B., taken and unjustly detained, as it is said; and that you have that record before us on —, wheresoever we shall then be in England, [or in C. P. "before our justices at Westminster, on —," or in Exch. "before the barons of our Exchequer at Westminster, on —,"] under your seal, and the seals of four lawful men of the same court, of such as shall be present at such record; and prefix the same day to the parties aforesaid, that then they may be there, to proceed in the said plaint as shall be just: and have there the names of the said four men and this writ. Witness ourself at Westminster the — day of, &c., in the year of our Lord —. Because the said C. D. took the said [cattle,] goods, and chattels, in his damage. Let this writ be executed, if the cause be true, and the said A. B. require it, otherwise not.

[See 2 Chit. Ar. Pr. 795.]

32. *Return thereto.*

Manor of —, } At the court of —, baron of —, chief bailiff
County of —. } of the liberty and franchise of [or "lord of the manor of —,"], in the said county, holden at — in and for the said liberty [or "manor"], on the — day of —, 1840, before S. S. steward of the said court.

In replevin.

B. B. complains of F. F. of a plea of taking and unjustly detaining his [cattle,] goods, and chattels, to the damage of the said B. B. of £—; defendant appears, and desires declaration.

33. *Procedendo thereon.*

Victoria, [&c. ante, 415, No. 1,] to the steward of the court of —, greeting: Whereas a plaint which was in the court of — without our writ, between B. B. and F. F. of the [cattle,] goods, and chattels of the said B. B. taken and unjustly detained, as it was said, by certain dilatory cavils and exceptions, unjustly suggested on behalf of the said B. B., hath been long delayed in the said court, to the great charge and grievance of the said B. B. We command you that you proceed in that plaint as far as with justice you may, and cause full and speedy justice to be done to the said B. B. in the said plaint, that no further complaint come to us. Witness ourself at Westminster, the — day of —, in the year of our Lord —.

34. *Rule to declare.*

On — the — day of —, A. D. —.

B. B. } — is given to the plaintiff in replevin to declare; otherwise
v. } let there be a return of the goods.
F. F. }

[See 2 Chit. Ar. Pr. 798.]

35. *Demand of Declaration, in Q. B.*

[Same as in other cases, ante, 25; and see form, ante, 421, of notice of filing recordari and demand of declaration, in Q. B.]

[See 2 Chit. Ar. Pr. 799.]

36. *Rule to declare, in C. P.*

In the Common Pleas.

B. B. }
v. } Rule to declare.
F. F. }

37. *Notice of Entry thereof, and of Demand of Declaration, in C. P.*

In the Common Pleas.

Between A. B. plaintiff and C. D. defendant.

Take notice, that the defendant, on — last, entered a rule to declare in this cause with the secondary; and he hereby demands a declaration in this cause, by

To Mr. L. L. plaintiff's attorney,
[or "agent."]

Your's &c. E. F.
defendant's attorney
[or "agent."]

—, 1840.

38. *Judgment for Defendant in Q. B. at Common Law, for a Return &c. on Non-pros for want of Declaration.*

In the Queen's Bench.

As yet of — term (*term of which judgment is signed*),
in the — year of the reign of Victoria. Witness
— (*name of chief justice*) (a).

— (to wit.) C. D. was summoned to answer A. B. of a plea wherefore he took the [cattle,] goods, and chattels of the said A. B. and unjustly detained them against gages and pledges &c. And thereupon the said C. D. in his proper person offers himself, on the fourth day, against the said A. B. in the plea aforesaid; but the said A. B. although solemnly called, comes not, but makes default; nor does he further prosecute his writ against the said C. D. Therefore it is considered that the said A. B. take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c. (b); and that the said C. D. do go thereof without day &c.; and that he have a return of the said [cattle,] goods and chattels &c. It is also considered by the court here, that the said C. D. do recover against the said A. B. £—, for his costs and charges by him laid out about his defence in this behalf, by the said court here adjudged to the said C. D. and with his assent, according to the form of the statute in such case made and provided, and that the said C. D. have execution thereof &c.

[See 2 Chit. Ar. Pr. 799.]

39. *The like, in C. P.*

In the Common Pleas.

As yet of — term, — Victoria.

— (to wit.) A. B. at whose suit C. D. was summoned to answer of a plea wherefore he took the [cattle,] goods and chattels of the said A. B. and unjustly detained the same against sureties and pledges until &c., doth not further prosecute his writ in this behalf against the said C. D. Therefore &c. [*conclude as in the preceding form.*]

40. *Retorno habendo, on Non-pros for want of Declaration at Common Law.*

Victoria [&c. ante, 415, No. 1,] to the sheriff of —, greeting: Whereas E. F. was summoned to be in our court before us [*or in C. P. "before our justices of the bench at Westminster," or in Erch. "before the barons of our Exchequer at Westminster"*], to answer A. B. of a plea wherefore he took the [cattle,] goods and chattels of the said A. B.,

(a) It is not clear whether the rules of H. T. 4 Will. 4, are applicable to replevin, that suit not being commenced by the process prescribed by the Uniformity of Process Act. Therefore the warrant of attorney for defendant, which has been hitherto inserted in this form, might perhaps be entered as usual. It is, however, now usually omitted; and, it is conceived, properly so. If entered, the following is the form, and it precedes

the commencement of the declaration:—

" — (to wit.) C. D. puts in his place D. A. his attorney, at the suit of A. B. in a plea of taking and unjustly detaining the [cattle,] goods, and chattels of the said A. B. against gages and pledges &c."

(b) It should seem that this, as to the pledges to prosecute, may be omitted.

and unjustly detained them against gages and pledges &c., as it was said; and the said *A. B.* afterwards in our same court made default; wherefore it was considered in our same court, that he and his pledges to prosecute should be in mercy &c., and that the said *C. D.* should go thereof without day &c.; and that he should have a return of the said [cattle,] goods and chattels &c. Therefore we command you, that without delay you cause the said [cattle,] goods and chattels, to be returned to the said *C. D.*, and that you do not deliver them, on the complaint of the said *A. B.*, without our writ, which shall make express mention of the judgment aforesaid; and in what manner you shall have executed this our writ make appear to us on — (a), wheresoever we shall then be in England [or in *C. P.* “to our justices of the bench at Westminster, on —” (a), or in *Exch.* “to the barons of our Exchequer at Westminster, on —,”] and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 800.]

41. Return of *Elongata*, to a *Retorno habendo*.

Before the coming of this writ [or “precept”] to me, the [cattle,] goods and chattels, within mentioned, were eloigned, and removed by the within-named *A. B.* to places to me unknown: Therefore I cannot cause the same to be returned to the within-named *C. D.* as I am within commanded.

The answer of S. S. sheriff,
[or “H. H. bailiff.”]

[See 2 Chit. Ar. Pr. 800.]

42. The Writ of Execution for the Costs by *Fi. fa.* or *Ca. sa.* is the same as ante, 148, 149, *mutatis mutandis*.

43. Entry on Roll of award of Writ of Second Deliverance.

[After stating the judgment for a return &c. proceed thus:] Afterwards, to wit, on —, before the lady the queen at Westminster, comes [or in *C. P.* or *Exch.* “afterwards, to wit, on —, comes here”] the said *A. B.* by *P. A.* his attorney; and, according to the form of the statute in such case made and provided, prays the writ of the said lady the queen of second deliverance of the [cattle,] goods and chattels aforesaid; and it is granted to him, returnable on —, wheresoever the said lady the queen shall then be in England [or in *C. P.* or in *Exch.* “returnable here, on —”]; the same day is given to the said *C. D.* &c.

[See 2 Chit. Ar. Pr. 800.]

44. Writ of Second Deliverance.

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: If *A. B.* shall make you secure of prosecuting his claim, and also of returning the [cattle,] goods and chattels, which were lately adjudged to *C. D.* in our court before us [or in *C. P.* “before our justices of the bench,” or in *Exch.* “before the barons of our Exchequer”] at Westminster, on

(a) It is doubtful whether a writ of execution in replevin can be made returnable “immediately after the execution” thereof, that action not being

within the provisions of the Uniformity of Process Act, and perhaps not within the 3 & 4 Will. 4, c. 67, s. 2, passed to further those provisions.

account of the default of the said *A. B.* if a return thereof shall be adjudged; we command you, that if, by virtue of our writ of *retorno habendo*, to you thereupon before directed, you have caused the said [cattle,] goods and chattels, to be returned to the said *C. D.*, then that you cause them to be re-delivered to the said *A. B.*, and put by gages and safe pledges the said *C. D.* that he be before us on —, wheresoever we shall then be in England [or in *C. P.* "before our said justices at Westminster aforesaid, on —," or in *Erch.* "before the barons of our Exchequer at Westminster, on —,"] to answer to the said *A. B.* in a plea of taking and unjustly detaining of the [cattle,] goods and chattels aforesaid, and have there the names of the pledges and this writ. Witness ourself at Westminster, the — day of —, in the year of our Lord—. [See 2 *Chit. Ar. Pr.* 800.]

45. *Return to Writ of Second Deliverance.*

By virtue of this writ to me directed, I have caused to be delivered to the within-named *A. B.* his [cattle,] goods and chattels within mentioned, as I am within commanded. The pledges within mentioned are *John Den* and *Richard Fen*.

The answer of *W. W. sheriff*.

46. *Capias in Withernam thereon, after Judgment of Non-pros for want of a Declaration.*

Victoria, [&c. *ante*, 415, No. 1,] to the sheriff of —, greeting: Whereas *C. D.* was summoned to be in our court before us [or in *C. P.* "before our justices at Westminster," or in *Erch.* "before the barons of our Exchequer at Westminster"], to answer *A. B.* of a plea wherefore he took the [cattle,] goods and chattels of the said *A. B.*, and unjustly detained them against sureties and pledges &c. And the said *A. B.* afterwards, in our same court, made default; wherefore it was considered that the said *A. B.* should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy &c., and that the said *C. D.* should go thereof without day &c.; and that he should have a return of the [cattle,] goods and chattels aforesaid &c. Whereupon by our writ we commanded you, that without delay you should cause the [cattle,] goods and chattels aforesaid to be returned to the said *C. D.*; and that you should not deliver them, on the complaint of the said *A. B.*, without our writ, which should make express mention of the judgment aforesaid; and in what manner you should have executed that our writ, you should make appear to us, on — (a), wheresoever [&c. or in *C. P.* "to our said justices at Westminster aforesaid, on —," or in *Erch.* "to the said barons at Westminster, on —"]. And whereas you on the — day of — last returned to us [or in *C. P.* "to our said justices," or in *Erch.* "to the said barons"], that before the coming of the writ aforesaid, the [cattle,] goods and chattels aforesaid were eloigned and removed by the said *A. B.* to places to you unknown, so that you could not cause them to be returned to the said *C. D.* as by the said writ you were commanded: Therefore we command you, that you take in withernam the [cattle,] good and chattels of the said *A. B.* to the value of the [cattle,] goods and chattels aforesaid, by the said *C. D.* first taken, and cause the [cattle,] goods and chattels, so taken in withernam, to be delivered to the said

(a) See *ante*, 427, n. (a)

C. D. to hold to him, until you can cause to be returned the said [cattle,] goods and chattels by the said C. D. first taken: And put by gages and safe pledges the said A. B. that he be before us, on —, wheresoever we shall then be in England, [or in C. P. “before our said justices at Westminster aforesaid, on —,” or in Exch. “before the said barons at Westminster, on —,”] to answer as well to us for his contempt, as to the said C. D. for the damages and injury to him in that behalf done: And in what manner you shall have executed this our writ make appear to us, wheresoever we shall then be in England, [or in C. P. “to our said justices at Westminster,” or in Exch. “to the said barons at Westminster,”] at the aforesaid time; and have there the names of the pledges and this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 800, 809.]

47. Judgment of Non-pros for want of a Declaration on 17 Car. 2, c. 7, s. 2, for arrears of rent, with award of Retorno habendo and Writ of Inquiry.

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

On the — day of — A. D. 1840.

As yet of — term, in the — year of the reign of Victoria, witness (name of chief justice, but in C. P. omit this.) (a)

— (to wit.) C. D. was summoned to answer A. B. of a plea, wherefore he took the [cattle,] goods, and chattels of the said A. B. and unjustly detained them against gages and pledges &c. And thereupon the said C. D. in his proper person offers himself, on the fourth day against the said A. B. in the plea aforesaid; and the said A. B., although solemnly called, comes not, but makes default; nor does he further prosecute his writ against the said C. D. Therefore it is considered that the said A. B. take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c. (b) and that the said C. D. do go thereof without day &c.; and that he have a return of the said [cattle,] goods, and chattels &c.: And thereupon the said C. D., according to the form of the statute in such case made and provided, suggests and gives the court here to understand and be informed, that [here state the avowry or cognizance which may be thus:] he the said C. D. took the said [cattle,] goods, and chattels of the said A. B. (for the taking whereof he was summoned to be in our said court here, to answer to the said A. B. as aforesaid), at the parish of —, in the said county of —, in a certain dwelling-house there, and in a certain place there called —: and that he took the same as bailiff of L. L. for that the said A. B. for the space of — next before and ending on the — day of —, in the year of our Lord —, and from thence until the time of taking the said [cattle,] goods, and chattels, held and enjoyed the said dwelling-house and place in which &c. with the appurtenances, amongst other things, as tenant thereof to the said L. L. at and under the yearly rent of £—, payable on —, the —, &c. [days of payment]: And because the sum of £— of the rent aforesaid, for the space of —, ending as aforesaid, on the said — day of —, in the year aforesaid, and from thence until and

(a) As to the entry of the warrant of attorney for the defendant, see ante, 426, n. (a).

(b) Perhaps this statement as to the pledges is not necessary.

at the time of taking the said [cattle,] goods, and chattels, was in arrear and unpaid from the said *A. B.* to the said *L. L.*, he the said *C. D.* as bailiff of the said *L. L.* took the said [cattle,] goods, and chattels, as, for, and in the name of a distress for the said rent so due and in arrear from the said *A. B.* to the said *L. L.* as aforesaid: And hereupon the said *C. D.* according to the form of the statute in such case made and provided, prays the writ of our said lady the queen, to be directed to the sheriff of —, to inquire* of the sum in arrear of the rent aforesaid, and of the value of the [cattle,] goods, and chattels aforesaid; and it is granted to him &c. Therefore it is commanded to the said sheriff of —, that according to the form of the statute aforesaid he diligently inquire, by the oath of twelve good and lawful men of his bailiwick, how much of the yearly rent aforesaid, at the time of taking and distraining the said [cattle,] goods, and chattels, was in arrear and unpaid, and how much the said [cattle,] goods, and chattels, so aforesaid taken and distrained, were worth, according to the true value of the same; and that the inquisition which the said sheriff shall thereupon take, he make appear to our said lady the queen, on —, wheresoever our said lady the queen shall then be in England, [or in *C. P.* “to the justices here, on —,” or in *Erch.* “to the barons here on —,”] under his seal, and the seals of those by whose oath he shall take the said inquisition; and that he have there the names of those by whose oath he shall take the said inquisition, together with the writ of our said lady the queen to him thereupon directed; the same day is given to the said *C. D.* &c.

[See forms of the entry of the Inquisition found, and final judgment thereon, post, 432.]

[See 2 *Chit. Ar. Pr.* 800.]

48. *Writ of Inquiry, on 17 Car. 2, to ascertain the Arrears of Rent, &c. on Non-pros for want of a Declaration.*

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: Whereas *C. D.* was summoned to be in our court before us [or in *C. P.* “before our justices at Westminster,” or in *Erch.* “before the barons of our Exchequer at Westminster”], to answer *A. B.* of a plea wherefore he took the [cattle,] goods, and chattels of the said *A. B.* and unjustly detained them against gages and pledges &c. And the said *C. D.* offered himself in our said court on the fourth day, against the said *A. B.* in the plea aforesaid; but the said *A. B.*, although solemnly called, came not, but made default, nor did he further prosecute his writ against the said *C. D.* Therefore it was considered by the same court that the said *A. B.* should take nothing by his said writ, but that he and his pledges to prosecute should be in mercy &c.; and that the said *C. D.* should go thereof without day &c. and that he should have a return of the said [cattle,] goods, and chattels &c. And thereupon it hath been suggested in our said court by the said *C. D.* that he took the said [cattle,] goods, and chattels of the said *A. B.* (for the taking whereof he was summoned to be in our said court here, to answer the said *A. B.* as aforesaid,) at — in the said county, in a dwelling-house there, and in a place there called —, and that he took the same as bailiff of *L. L.*, for that the said *A. B.* for the space of — next before and ending on the — day of —, in the year of our Lord —, and from thence until and at the time of taking the said [cattle,] goods, and chattels, held and enjoyed the said dwelling house and place in which &c. with the appurtenances,

amongst other things, as tenant thereof to the said *L. L.*, at and under the yearly rent of £——. And because £—— of the rent aforesaid, for the said space of ——, ending as aforesaid, on the said —— day of ——, A.D. ——, and from thence until and at the time of taking the said [cattle,] goods, and chattels, were due and in arrear from the said *A. B.* to the said *L. L.*, the said *C. D.* as bailiff of the said *L. L.*, took the said [cattle,] goods, and chattels, as, for, and in the name of a distress for the said rent so due and in arrear from the said *A. B.* to the said *L. L.* as aforesaid: And thereupon the said *C. D.*, according to the form of the statute in such case made and provided, prayed our writ to be directed to you, to inquire of the arrears of the rent aforesaid, and of the value of the said [cattle,] goods, and chattels, and it was granted to him &c.; as by the record and proceedings thereof, still remaining in our said court at Westminster aforesaid, fully appears: Therefore we command you, that according to the form of the statute aforesaid, you diligently inquire, by the oath of twelve good and lawful men of your bailiwick, how much of the yearly rent aforesaid, at the time of taking and distraining the said [cattle,] goods, and chattels, was in arrear and unpaid, and how much the said [cattle,] goods, and chattels so as aforesaid taken and distrained, were worth, according to the true value of the same; and the inquisition which you shall thereupon take, make appear to us, on ——, wheresoever we shall then be in England, [or in *C. P.* “to our said justices at Westminster, on ——,” or in *Exch.* “to the said barons at Westminster, on ——,”] under your seal, and the seals of those by whose oath you shall take the said inquisition, and this writ. Witness —— (*name of chief justice or chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 *Chit. Ar. Pr.* 800.]

49. Notice of Inquiry thereon.

In the *Q. B.* [or “*C. P.*” or “*Exch. of Pleas.*”]

A. B. against *C. D.*

Take notice, that a writ of inquiry will be executed in this cause on —— [at the distance of fifteen days at least], at ——, [if in London, say “at the Secondary’s Office, No. 5, Basinghall-street, London,” and if the defendant mean to attend by counsel, add “when and where counsel will attend on behalf of the said defendant;” if in *Middlesex*, say “between the hours of eleven o’clock in the forenoon and one of the clock in the afternoon of the same day, at the Sheriff’s Office in Red Lion Square, near Holborn, in the county of *Middlesex*,” if in the country, say “at the house of ——, commonly called or known by the name or sign of ——, in —— street, at ——, in the county of ——:” if before the chief justice or chief baron, say “at the sittings after this present —— term, to be holden at the Guildhall of the city of London,” or in *Middlesex*, “at Westminster Hall, in the county of *Middlesex*,”] touching the sum in arrear at the time of the distress taken, and the value of the [cattle,] goods, and chattels distrained, according to the form of the statute in such case made and provided. Dated the —— day of ——, 1840.

Yours &c.

To Mr. *P. A.* plaintiff’s attorney
[or “agent.”]

D. A. defendant’s attorney
[or “agent.”]

50. *Inquisition and Return to Inquiry on Judgment of Non-pros, on 17 Car. 2, c. 7, s. 2, for want of a Declaration.*

— (to wit.) An inquisition indented taken at the house of —, called or known by the name or sign of —, in the said county of —, on the — day of —, in the — year of the reign of our sovereign lady Victoria, before S. S. sheriff of the county aforesaid, by virtue of a writ of our said lady the queen to the said sheriff directed, and to this inquisition annexed, to inquire of certain matters in the said writ specified, by the oath of J. K. B. &c. honest and lawful men of the said county*; who upon their oath say, that the sum of £— of the yearly rent in the said writ mentioned, was in arrear and unpaid from the said A. B. to the said C. D. at the time of taking and distraining the [cattle,] goods, and chattels in the said writ also mentioned; and that the said [cattle,] goods, and chattels were then worth, according to the true value, the sum of £—. In witness whereof, as well I the said sheriff, as the said jurors, have set our seals to this inquisition, the day and year and at the place above written. [By the same sheriff.]

(*Make the following indorsement on the writ:*) The execution of this writ appears in the inquisition hereunto annexed.

The answer of S. S. sheriff

[See 2 Chit. Ar. Pr. 800.]

51. *Entry of Inquisition and final Judgment thereon.*

[*Proceed as in the form, ante, 429, No. 47, to the end, and then thus:*] At which day comes here the said C. D. by his attorney aforesaid: and the sheriff of —, to wit, S. S., now here returns a certain inquisition indented, taken before him at — in the said county, on &c. (*day of inquisition,*) by the oath of twelve good and lawful men of his county, whereby it appears that the sum of £— of the said yearly rent was in arrear and unpaid, and due and owing from the said A. B. to the said C. D. at the time in the said avowry [*or “cognizance”*] mentioned, and of the distress taken, and that the [cattle,] goods, and chattels distrained were worth, according to the true value thereof, the sum of £—. Therefore it is considered that the said C. D. do recover against the said A. B. the said sum of £—, being the arrearages of the said rent by the said inquisition in form aforesaid found, and also £— by the court here adjudged to the said C. D. and at his request, for his costs and charges by him laid out about his defence in this behalf, according to the form of the statute in such case made and provided; which said arrearages, costs, and charges in the whole amount to £—; and that the said C. D. have execution thereof &c.

[See 2 Chit. Ar. Pr. 800.]

52. *The like, where the Goods are found to be of less value than the Rent.*

[*Proceed as in the last form to the statement of the inquisition inclusive, and then thus:*] Therefore it is considered that the said C. D. do recover against the said A. B. the said £—, parcel of the rent aforesaid, by the said inquisition in form aforesaid found, and also £— by the court here adjudged to the said C. D. and at his request, for his costs and charges by him laid out about his defence in this behalf, according to the

form of the statute in such case made and provided; which said value, costs, and charges, in the whole amount to £——; and that the said C. D. have execution thereof &c.

53. *Fi. fa. on Judgment for Defendant, on 17 Car. 2, c. 7.*

Victoria, [*&c. ante*, 415, No. 1,] to the sheriff of ——, greeting: We command you, that of the goods and chattels of A. B. in your bailiwick, you cause to be made £——, which C. D. lately in our court before us [*or in C. P. "before our justices at Westminster," or in Exch. "before the barons of our Exchequer at Westminster"*] recovered against him, for certain arrearages of rent, according to the form of the statute in such case made and provided; and also £—— which in our same court were adjudged to the said C. D. for his costs and charges by him laid out about his defence in a certain action of replevin, lately commenced and depending in the same court, at the suit of the said A. B. against the said C. D.; whereof the said A. B. is convicted, as appears to us of record, [*in C. P. omit the words "as appears to us of record," or in Exch. say "as by inspecting the rolls of our said Exchequer appears to us,"*] together with interest on the said several sums of £—— and £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. ——, on which day the judgment aforesaid was entered up [*or if entered up before the 1st October, 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*]. And have the said monies, together with such interest as aforesaid, before us on —— (a), wheresoever we shall then be in England, [*or in C. P. "before our said justices at Westminster, on ——," or in Exch. "before the said barons at Westminster, on ——,"*] (a) to be rendered to the said C. D. for the arrearages of rent, costs and charges and interest aforesaid: and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our justices," or in Exch. "to the said barons"*] at Westminster, immediately after the execution thereof; and have there this writ. Witness —— (*name of chief justice*), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 Chit. Ar. Pr. 800.]

54. *The like, for the value of Goods distrained, &c.*

Victoria, [*&c. ante*, 415, No. 1,] to the sheriff of ——, greeting: We command you, that of the goods and chattels of A. B. in your bailiwick, you cause to be made £——, which C. D. lately in our court before us [*or in C. P. "before our justices at Westminster," or in Exch. "before the barons of our Exchequer at Westminster"*] recovered against him, for the value of certain [cattle,] goods, and chattels, distrained by the said C. D. for certain arrearages of rent, according to the form of the statute in such case made and provided, and also £—— which in our same court [*&c. conclude as in last form from the asterisk*.*]

55. *Ca. sa. thereon.*

[*Proceed as in the usual form, ante, 202, to the words*]——were awarded to the said C. D. as well certain arrearages of rent due to him from the

(a) See *ante*, 427, n.

said *A. B.*, according to the form of the statute in such case made and provided, as for his costs and charges by him [*&c. conclude as in form, ante, 202, No. 4, calling the action "an action of replevin."*]

[*See 2 Chit. Ar. Pr. 800.*]

56. Declaration in Replevin.

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

On the — day of —, as yet of — term, — Victoria.
 — (to wit.) *A. B.* was summoned to answer *C. D.* of a plea wherefore he took the [cattle,] goods, and chattels [*or "the growing corn"*] of the said *C. D.* and unjustly detained the same against gages and pledges, until &c.; and thereupon the said *A. B.* by *P. A.* his attorney complains, for that the defendant on the — day of —, in the year of our Lord 1840, at the parish of —, in the county of —, in a certain dwelling-house there [*or if on land "in a certain close there called —," or "common there called —," or "place there called —,"*] took the cattle [*or "the goods and chattels"*], to wit — (*enumerate the goods with sufficient particularity*), of the plaintiff, of the value, to wit, of £—, and unjustly detained the same against sureties and pledges, until &c. Wherefore the plaintiff says that he is injured and hath sustained damages to the amount of £—, and therefore he brings his suit &c.

[*See 2 Chit. Ar. Pr. 801.*]

57. The form of Memorandum for a Rule to avow, is the same as *ante*, 38, Nos. 3, 4; and of Demand of Avowry, *ante*, 38.

[*See 2 Chit. Ar. Pr. 801.*]

58. Judgment for Plaintiff, by Nil dicit, in Q. B.

As yet of — term, (*term of which interlocutory judgment signed*), in the — year of the reign of Victoria. Witness — (*name of chief justice(a)*).

— (to wit.) *C. D.* was summoned to answer *A. B.* of a plea wherefore [*&c. copy the declaration to the end, and proceed on a new line as follows:*]

And on — (*day of signing interlocutory judgment*) the defendant, by *D. A.* his attorney, comes and says nothing in bar or preclusion of the said action of the plaintiff, whereby the plaintiff remains therein undefended against the defendant; wherefore the plaintiff ought to recover against the defendant his damages on occasion of the taking and unjustly detaining of the [cattle,] goods, and chattels aforesaid*: and because it is unknown to the court of our said lady the queen now here, what damages

(a) It is not usual, nor it seems proper, since R. H. 4 Will. 4, to enter the warrants of attorney, even in a replevin suit. It has been doubted, however, whether that rule is applicable in replevin. If entered, they should be as follows:—

" — (to wit) *A. B.* puts in his place *P. A.* his attorney against *C. D.*

in a plea of taking and unjustly detaining the [cattle,] goods, and chattels of the said *A. B.* against gages and pledges, &c.

" — (to wit.) The said *C. D.* puts in his place *D. A.* his attorney, at the suit of the said *A. B.* in the plea aforesaid."

the plaintiff hath sustained by means of the premises, the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the plaintiff hath sustained as well on occasion of the premises as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which he shall thereupon take to our said lady the queen at Westminster on —, under his seal and the seals of those by whose oath he shall take the said inquisition, together with the writ of our said lady the queen to him thereupon directed. The same day is given to the plaintiff here, &c. [See continuation of the form of entry of the inquisition and final judgment, post, 436.]

[See 2 Chit. Ar. Pr. 801.]

59. *The like, in C. P. or Exchequer.*

[Proceed as in the last form, to the asterisk, and then thus:] But because it is unknown to the justices [or in Exch. "to the barons"] here what damages the plaintiff hath sustained on occasion thereof, the sheriff is commanded, that by the oath of twelve good and lawful men of his county, he diligently inquire what damages the plaintiff hath sustained, as well on occasion of the premises as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which he shall thereupon take he make appear to the justices [or in Exch. "the barons"] here on — under his seal and the seals of those by whose oath he shall take the said inquisition, together with the writ of our said lady the queen to him thereupon directed. The same day is given to the plaintiff here &c. [See continuation of form of entry of inquisition and final judgment thereon, post, 436.]

60. *Writ of Inquiry for Damages for Plaintiff in Judgment by Nil dicit, in Q. B.*

Victoria, [&c. ante, 415, No. 1,] to the sheriff of —, greeting: Whereas C. D. was summoned to be in our court before us [or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer"] at Westminster, to answer A. B. of a plea wherefore the said C. D. on &c. [as in declaration], at the parish of — in your county, in a dwelling-house there and place there called —, took the [cattle], goods and chattels of the said A. B., to wit [&c. set out the goods as in the declaration], and unjustly detained them against sureties and pledges, until &c., wherefore the said A. B. said that he was injured and had sustained damage to the value of £—, and therefore he brought his suit &c. And such proceedings were thereupon had in our said court at Westminster aforesaid, that the said A. B. ought to recover against the said C. D. his damages on occasion of the taking and unjustly detaining of the [cattle,] goods and chattels aforesaid: But because it is unknown to our said court what damages the said A. B. hath sustained by means of the premises aforesaid, therefore we command you, that by the oath of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said A. B. hath sustained as well by means of the premises aforesaid as for his costs and charges by him about his suit in this behalf expended*: and that you send to us at Westminster, on the — day of —, the inquisition which you shall thereupon take under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ*. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

61. *The like, in C. P. or Exchequer.*

[*Same as the form, ante, 435, No. 60, but instead of the sentence between the asterisks**, say*]—And the inquisition which you shall thereupon take make appear to our justices [*or in Erch. "to the said barons"*] at Westminster, on —, under your seal and the seals of those by whose oath you shall take the said inquisition, and have there the names of those by whose oath you shall take the said inquisition, and this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

62. *Notice of Inquiry thereon. Inquisition and Return.*

[*Same as in ordinary cases in trespass. See the forms, ante, 338, 339, 340.*]

63. *Entry of final Judgment and Inquisition on Judgment for Plaintiff, by Nil dicit, in Q. B.*

[*Proceed as in the form, ante, 434, No. 58, to the end, and then thus:*] At which day, before our said lady the queen at Westminster, comes the plaintiff by his attorney, and the sheriff, to wit, S. S. sheriff of the said county, now here returns a certain inquisition indented, taken before him at — in the county aforesaid, on — (*day of returning inquisition*), by the oath of twelve good and lawful men of his bailiwick, by which it is found that the plaintiff hath sustained damages by means of the premises to £— over and above his costs and charges by him about his suit in this behalf expended, and for those costs and charges to — shillings. Therefore it is considered that the plaintiff do recover against the defendant his damages aforesaid by the said inquisition above found, and also £— for his said costs and charges, by the court here adjudged of increase to the plaintiff, and with his assent; which said damages, costs, and charges in the whole amount to £—; and the defendant in mercy &c. [*Add the usual marginal notes, as directed at the end of the form, ante, 102.*]

64. *The like, in C. P.*

[*Proceed as in the form ante, 435, No. 59, to the end, and then thus:*] At which day cometh here the plaintiff by his said attorney, and the sheriff, to wit, S. S. esq., sheriff, now here returns [*&c. conclude as in the preceding form.*]

65. *Fieri facias, for Plaintiff.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you, that of the goods and chattels of C. D. in your bailiwick you cause to be made £—, which A. B. lately in our court before us [*or in C. P. "before our justices," or in Erch. "before the barons of our Exchequer"*] at Westminster recovered against him, for his damages which he had sustained, as well on occasion of the taking and unjustly detaining of the [cattle,] goods and chattels of the said A. B. as for his costs and charges by him about his suit in that behalf expended [*or in C. P. "for his damages" &c. omitting the costs*], whereof the said C. D. is convicted*, as appears to us of record [*or in C. P. omit the words "as*

appears to us of record," or in *Exch.* say "as by inspecting the rolls of our said Exchequer appears to us"; together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. ——, on which day the judgment aforesaid was entered up, [or if entered up before the 1st Oct. 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up,"] and have that money, together with such interest as aforesaid, before us on —— (a), wheresoever we shall then be in England, to be rendered to the said A. B. for his damages and interest aforesaid*, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us, wheresoever we shall then be in England, on —— aforesaid, and have there then this writ. Witness —— (name of chief justice), at Westminster, the —— day of ——, in the year of our Lord ——. [If in C. P. or *Exch.* insert, instead of the words between the asterisks**, "And have that money before our justices, (or in *Exch.* "before the aforesaid barons") at Westminster, on —— (a), to be rendered to the said A. B. for his damages aforesaid.]

66. *Ca. sa. for Plaintiff.*

[Same as the *ca. sa. ante*, 190, 191, Nos. 1, 2, except that instead of the words "on occasion of not performing certain promises made by the said C. D. to the said A. B." say "on occasion of the taking and unjustly detaining of the [cattle,] goods and chattels of the said A. B. by the said C. D."]

67. *Common Avotory, or Cognizance for Rent, on 11 Geo. 2, c. 19, s. 22.*
In the Q. B. [or "C. P." or "*Exch.* of Pleas."]

On the —— day of ——, A. D. ——, as yet of —— term, —— Victoria.

C. D. } And the defendant, by D. A. his attorney (b), well avows [or
ats. { "as bailiff of L. L. esq. well acknowledges"] the taking of the
A. B. } said [cattle,] goods and chattels in the said declaration mentioned, in the said dwelling-house and place, [as in declaration,] in which &c., and justly &c.: Because he says, that the plaintiff for a long space of time, to wit, for the space of —— next before and ending on the —— day of ——, in the year of our Lord 1840, and from thence until and at the said time when &c. held and enjoyed the said dwelling-house [and place] in which &c. with the appurtenances, as tenant thereof to the defendant [or "L. L."], by virtue of a certain demise thereof theretofore made, at and under a certain yearly rent, to wit, the yearly rent of £——, payable [half-yearly on the —— day of ——, and on the —— day of ——] (let this agree with the facts), in every year, by even and equal portions: and because the sum of £—— of the rent aforesaid, for the said space of [half-a-year] ending as aforesaid, on the said —— day of ——, in the year aforesaid, and from thence until and at the said time when &c. was due and in arrear from the plaintiff to the defendant [or

(a) See *ante*, 427, n.

(b) The words "comes and defends the wrong and injury when &c." which before the rule of H.T. 4 Will. 4, r. 10,

were here inserted, are, it is conceived, unnecessary, though there may be some doubt as to whether that rule is applicable to a replevin suit.

"L. L.," he the defendant well avows [or "as bailiff of the said L. L. well acknowledges"] the taking of the said [cattle,] goods, and chattels in the said dwelling-house [and place] in which &c., and justly &c., as for and in the name of a distress for the said rent so due and in arrear as aforesaid, and which said rent still remains due and in arrear. And this the defendant is ready to verify, wherefore he prays judgment, and a return of the said [cattle,] goods, and chattels, together with his damages &c., according to the form of the statute in such case made and provided, to be adjudged to him &c.

[See 2 Chit. Ar. Pr. 801.]

68. *Rule to plead in Bar.*

[Same as in form, ante, 42, No. 1; see 2 Chit. Ar. Pr. 804.]

69. *Judgment for Defendant, at Common Law, for a Return, on a Non-pros, for want of a Plea in Bar.*

As yet of — term (the term of which interlocutory judgment is signed), in the — year of the reign of Queen Victoria. Witness — (name of chief justice). (a)

— (to wit: C. D. was summoned to answer A. B. of a plea [copy declaration and avowry, or cognizance, and proceed thus:] And upon this the defendant prays that the plaintiff may plead in bar of the said avowry [or "cognizance"]; and thereupon a day is given to the plaintiff before the lady the queen, until —, wheresoever the said lady the queen shall then be in England, [or in C. P. or Exch. "a day is given here to the plaintiff, until —,"] that is to say, for the said A. B. to plead in bar of the said avowry [or "cognizance"] &c.; the same day is given to the defendant &c. At which day comes here the defendant, by his attorney aforesaid, and offers himself against the plaintiff, in the plea aforesaid; but the plaintiff, although solemnly called, comes not, but makes default, nor hath he pleaded in bar of the said avowry, [or "cognizance,"] nor does he further prosecute his writ against the defendant: Therefore it is considered that the plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c., and that the defendant do go thereof without day &c., and that he have a return of the [cattle,] goods, and chattels aforesaid &c.* And it is further considered by the court here that the defendant do recover against the plaintiff £— for his costs and charges by him laid out about his defence in this behalf, by the said court here adjudged to the defendant, and with his assent, according to the form of the statute in such case made and provided; and that the defendant have execution thereof &c.

[See 2 Chit. Ar. Pr. 805.]

70. *Retorno habendo, at Common Law, for want of a Plea in Bar.*

Victoria, [&c. ante, 436, No. 65,] to the sheriff of —, greeting: Whereas C. D. was summoned to be in our court before us [or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer"] at Westminster, to answer A. B. of a plea, wherefore the said C. D. on [&c. as in declaration], at the parish of —, in your county, in a certain dwelling-house and place there, called —, took the [cattle,] goods, and

(a) As to the entry of the warrants of attorney, see ante, 434, n. (s).

chattels of the said *A. B.*, to wit, [*&c. set out the goods as in declaration,*] and unjustly detained them against gages and pledges, until *&c.* as it was said: And the said *C. D.* appearing in our said court by *D. A.* his attorney, well avowed [*or "as bailiff of L. L. well acknowledged"*] the taking of the said [*cattle,*] goods, and chattels in the said dwelling-house and place in which *&c.* and justly *&c.*, for damage there done, [*or "for certain arrears of rent, to wit, for the sum of £——, due and in arrear from the said A. B. to the said C. D. for the said place in which &c. with the appurtenances, held and enjoyed under and by virtue of a certain demise thereof, made by the said C. D. for the space of —— next before and ending on the —— day of ——, in the year of our Lord 18——."*] Whereupon the said *A. B.* being afterwards solemnly called in our said court came not, nor did he further prosecute his writ aforesaid; wherefore it was considered in our said court that the said *A. B.* should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy *&c.* and that the said *C. D.* should go thereof without day *&c.*; and that he should have a return of the said [*cattle,*] goods, and chattels *&c.** Therefore we command you, that without delay you cause the said [*cattle,*] goods, and chattels to be returned to the said *C. D.*; and that you do not deliver them, on the complaint of the said *A. B.* without our writ, which shall make express mention of the judgment aforesaid; and in what manner you shall have executed this our writ make appear to us on —— (*a*), wheresoever we shall then be in England, [*or in C. P. "to our said justices at Westminster, on —— (a)," or in Exch. "to the said barons at Westminster, on ——,"*] and have there this writ. Witness —— (*name of chief justice or chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 Chit. Ar. Pr. 805.]

71. Execution for Costs.

[Same as forms, ante, 201, 202, mutatis mutandis.]

72. Judgment for Defendant, on 21 Hen. 8, c. 19, on a Non-pros for want of a Plea in Bar, with Award of Retorno habendo and Writ of Inquiry.

[Proceed as in form, ante, 438, No. 69, to the asterisk*, and then thus:] And it is further considered by the court here that the defendant ought to recover against the plaintiff his damages on occasion of the premises, according to the form of the statute in such cases made and provided. Therefore it is commanded to the sheriff, that without delay he cause the [*cattle,*] goods, and chattels aforesaid to be returned to the defendant; and that he do not deliver them, on the complaint of the plaintiff, without the writ of the said lady the queen, which shall make express mention of the judgment aforesaid: And in what manner he shall execute the writ of the said lady the queen, he make appear to the said lady the queen, immediately after the execution thereof, wheresoever she shall then be in England, [*or in C. P. "to the justices here," or in Exch. "to the barons here, immediately after the execution thereof."*]† It is also commanded to the sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the defendant hath sustained, as

(a) See ante, 427, n.

well on occasion of the premises, according to the form of the statute in such case made and provided, as for his costs and charges by him laid out about his defence in this behalf; and that the inquisition which the said sheriff shall thereupon take, he make appear to the said lady the queen, at the time aforesaid, wheresoever she shall then be in England, [*or in C. P. "to the justices here," or in Exch. "to the barons here at the time aforesaid,"*] under his seal and the seals of those by whose oath he shall take that inquisition; and that he have there the names of those by whose oath he shall take that inquisition, together with the writ of the said lady the queen to him thereupon directed; the same day is given to the defendant &c.

[*See 2 Chit. Ar. Pr. 804, 805.*]

73. *The like, with a Remittitur damna.*

[*Proceed as in the last form, to the dagger†, and then thus:*] And hereupon the defendant freely here in court remits to the plaintiff his damages aforesaid; therefore let the plaintiff be acquitted thereof: And it is further considered by the court here, that the defendant do recover against the plaintiff £—— for his costs and charges by him laid out about his defence in this behalf, by the said court here adjudged to the defendant, and with his assent, according to the form of the statute in such case made and provided, and that the defendant have execution thereof &c.

74. *Writ of Inquiry, on 21 Hen. 8, c. 19, on Non-pros, for want of a Plea in Bar.*

[*Proceed as in the writ De retorno habendo, ante, 438, No. 70, to the asterisk*, and then thus:*] And it was also by our said court considered that the said C. D. ought to recover against the said A. B. his damages on occasion of the premises, according to the form of the statute in such case made and provided; but because it is unknown to our said court what damages the said C. D. hath sustained on occasion of the premises, therefore, according to the statute in such case made and provided, we command you, that by the oath of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said C. D. hath sustained, as well on occasion of the premises as for his costs and charges by him about his defence in this behalf expended, and that you send the inquisition which you shall take thereon to us, on ——, wheresoever we shall then be in England, [*or in C. P. "to our justices at Westminster, on ——," or in Exch. "to the barons of our Exchequer,"*] under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness —— (*name of chief justice or chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

75. *The form of the Notice of Inquiry is as ante, 338; and the Inquisition and Return thereon, as ante, 340.*

76. *The Entry thereof upon the Roll is as ante, 439, No. 72, to the end of the entry of the judgment of non-pros and award of the writ of inquiry, and then continue the entry, "At which day," &c. and conclude as in the form in ordinary cases, ante, 328, No. 1.*

77. *The Writ de Retorno habendo thereon is as ante, 438, No. 70.*

78. *Fi. fa. or Ca. sa. thereon for Costs and Damages.*

[Same as in ordinary cases, *ante*, 201, 202, but say "awarded to the said C. D. according to the form of the statute in such case made and provided, for his damages, as well by reason of certain damage done by the cattle of the said A. B. (or if the distress was for rent, alter this accordingly) as for his costs and charges by him laid out and expended about his defence in a certain action of replevin lately prosecuted, &c." and say "to render to the said C. D. for his damages, costs, and charges and interest aforesaid."]

79. *Capias in Withernam, on 21 Hen. 8, c. 19, and Ca. sa. for Damages and Costs, after Return of Elongata.*

Victoria, [&c. as *ante*, 436, No. 65,] to the sheriff of —, greeting: Whereas C. D. was summoned to be in our court [&c. as *ante*, 438, No. 70.] And the said C. D. appearing in our same court, for a certain reason by him alleged in the same court, well avowed the taking of the said [cattle,] goods, and chattels in the said place in which &c. and justly &c. for damage there done: And the said A. B. afterwards, in our same court, made default; wherefore it was considered by the same court, that the said A. B. should take nothing by his said writ, but that he and his pledges to prosecute should be in mercy &c., and that the said C. D. should go thereof without day &c.; and that he should have a return of the said [cattle,] goods, and chattels, &c. Therefore we lately commanded you, that without delay you should cause the [cattle,] goods, and chattels aforesaid to be returned to the said C. D.; and that you should not deliver them, on the complaint of the said A. B. without our writ, which should make express mention of the judgment aforesaid; and in what manner you should have executed that our writ, you should make appear to us on — (a), wheresoever we should then be in England, [or in C. P. "to our said justices (or in *Erch.* "to the said barons") at Westminster aforesaid, on —."] (a) We also lately commanded you, that, according to the form of the statute in such case made and provided, you should diligently inquire, by the oath of good and lawful men of your bailiwick, what damage the said C. D. hath sustained, as well on occasion of the premises as for his costs and charges by him laid out about his defence in that behalf; and that the inquisition which you should thereupon take, you should send to us on —, wheresoever we should then be in England, [or in C. P. "to our said justices (or in *Erch.* "to the said barons") at Westminster,"] under your seal and the seals of those by whose oath you should take that inquisition, together with the writ aforesaid. And you on — returned to us, [or in C. P. "to our justices (or in *Erch.* "to the said barons") at Westminster aforesaid,"] that the [cattle,] goods, and chattels aforesaid were eloigned and removed by the said A. B. to places to you unknown, so that you could not cause the same to be returned to the said C. D.; and you also on the said — day of &c. returned to us [or in C. P. "to our said justices," or in *Erch.* "to our said barons"] a certain inquisition taken before you, at —, in your county, on [&c. day of taking inquisition], by which it was found that the said C. D. had sustained damages on occasion of the premises, besides his costs and charges by him laid out about his defence

(a) See *ante*, 427, n.

in that behalf, to £——, and for those costs and charges to ——s. Therefore it was considered by our said court that the said C. D. should recover against the said A. B. his damages aforesaid, by the said inquisition in form aforesaid found, and also £—— by our said court adjudged of increase to the said C. D. and with his assent, for his costs and charges aforesaid; which said damages, costs, and charges in the whole amount to £——, and that the said A. B. should be in mercy &c. Therefore we command you, that you take in withernam the [cattle,] goods, and chattels, of the said A. B. in your bailiwick, to the value of the [cattle,] goods, and chattels before taken, and cause them to be delivered without delay to the said C. D. to hold to him irreplevisable until the said A. B. shall make return to the said C. D. of the [cattle,] goods, and chattels aforesaid, before taken: and in what manner you shall execute this our writ make appear to us on —— (a), wheresoever we shall then be in England, [or in C. P. “to our said justices” (or in Erch. “to the said barons”) at Westminster aforesaid on ——.”] (a) We also command you, that you take the said A. B. if he be found in your bailiwick, and him safely keep, so that you may have his body before us on ——, wheresoever we shall then be in England, [or in C. P. “before our said justices at Westminster,”] to satisfy the said C. D. of his damages, costs, and charges aforesaid; together with interest upon the said sum of £—— [&c. conclude as usual, see ante, 190, 191, Nos. 1, 2.]

[See 2 Chit. Ar. Pr. 800.]

80. *Judgment of Non-pros for want of Plea in Bar, with Award of Inquiry for Arrears of Rent, on 17 Car. 2, c. 7, s. 2.*

[Proceed as in the form, ante, 438, No. 69, to the asterisk*, and then thus:] And hereupon the defendant, according to the form of the statute in such case made and provided, prays the writ of our said lady the queen to be directed to the sheriff of ——, to inquire [&c. conclude as in the form, ante, 429, No. 47, from the asterisk*, to the end. If the inquisition has been returned, continue the entry thereof and final judgment, as directed, infra, No. 83.]

[See 2 Chit. Ar. Pr. 805.]

81. *Writ of Inquiry under 17 Car. 2, c. 7, s. 2, on Non-pros for want of a Plea in bar.*

Victoria, [&c. as ante, 436, No. 65,] to the sheriff of ——, greeting: Whereas C. D. was summoned to be in our court before us, [or in C. P. “before our justices at Westminster,” or in Erch. “before the barons of our Exchequer at Westminster,”] to answer A. B. of a plea wherefore the said C. D. on [&c. see the declaration,] at [&c.] in a certain dwelling-house there and place there called ——, took the [cattle,] goods, and chattels of the said A. B. to wit, [set out the goods, &c. as in the declaration], and unjustly detained them against gages and pledges, until &c. And the said C. D. appearing in our said court at Westminster aforesaid, by D. A. his attorney, well avowed [or “as bailiff of L. L. well acknowledged”] the taking of the said [cattle,] goods, and chattels [&c. set out the avowry, or cognizance, as in the judgment, and proceed thus:]

(a) See ante, 427, n.

and such proceedings were thereupon had in our said court at Westminster aforesaid, that it was afterwards considered in the same court that the said *A. B.* should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy &c.; and that the said *C. D.* should go thereof without day &c.; and that he should have a return of the said [cattle,] goods, and chattels &c. And thereupon the said *C. D.* according to the form of the statute in such case made and provided, prayed our writ [*&c. proceed as in the form, ante, 430, No. 48, to the end.*]

[See 2 Chit. Ar. Pr. 805.]

82. *The Notice of Inquiry is as ante, 431, No. 49. The Inquisition thereon as ante, 432, No. 50.*

83. *The Entry thereof upon the Roll is as ante, 442, No. 80, to the end; and then conclude, in the same paragraph, as in the form, ante, 432, No. 51.*

84. *The Fi. fa. or Ca. sa. thereon is the same as directed ante, 433.*

85. *Pleas in bar of Non Tenuit and no Rent in Arrear.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

On — the — day of —, A. D. —,
as yet of — term, — Victoria.

B. v. D. } And the plaintiff saith, that the defendant, by reason of any thing in his said avowry [*or "cognizance"*] above alleged, ought not to avow [*or "as bailiff of the said M. M. to acknowledge"*] the taking of the said [cattle,] goods, and chattels in the said declaration mentioned, in the said dwelling-house [and place] (*as in declaration*) in which &c., and justly &c. Because he says that the plaintiff did not hold or enjoy the said dwelling-house [and place] in which &c., with the appurtenances, as tenant thereof to the defendant [*or "the said M. M."*] under the supposed demise thereof in the said avowry [*or "cognizance"*] mentioned, in manner and form as the defendant hath above in his said avowry [*or "cognizance"*] in that behalf alleged: And this the plaintiff prays may be inquired of by the country &c. And for a further plea in this behalf, the plaintiff, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that the defendant, by reason of any thing in his said avowry [*or "cognizance"*] above alleged, ought not to avow [*or "as bailiff of the said M. M. to acknowledge"*] the taking of the said [cattle,] goods, and chattels in the said dwelling-house [and place] in which &c., and justly &c. because he says, that no part of the said supposed rent in the said avowry [*or "cognizance"*] mentioned, was or is in arrear from the plaintiff to the defendant [*or "M. M."*] in manner and form as the defendant hath above in his said avowry [*or "cognizance"*] in that behalf alleged: And this the plaintiff prays may be inquired of by the country &c.

[See 2 Chit. Ar. Pr. 805.]

86. *Judgment for Defendant at Common Law (or for Damages on 21 Hen. 8, c. 19,) for a Return &c. on Demurrer to a Plea in bar.*

[Enter the proceedings to the end of the demurrer-book, and then proceed thus:] At which day come here the parties aforesaid, by their attorneys aforesaid; whereupon all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said plea of the plaintiff by him above pleaded in bar of the avowry [or "cognizance"] aforesaid, and the matters therein contained, are not sufficient in law to bar the defendant from avowing [or "acknowledging"] the taking of the said [cattle,] goods, and chattels in the said place in which &c. to be just, as the defendant hath above alleged: Therefore it is considered that the plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c., and that the defendant do go thereof without day &c.; and that he have a return of the [cattle,] goods, and chattels aforesaid, to hold to him irreplevisable for ever: [if the judgment be for damages under the 21 Hen. 8, c. 18, here say, "and that he ought to recover against the plaintiff his damages on occasion of the premises, according to the form of the statute in such case made and provided."] [Then if the judgment be at common law, conclude as in the form, ante, 438, No. 69, from the asterisk*; or if on the stat. 21 Hen. 8, c. 19, then as in the form, ante, 439, No. 72, from the words "Therefore it is commanded &c."]

[See 2 Chit. Ar. Pr. 805.]

87. *Writ of Inquiry of Damages under 21 Hen. 8, c. 19, on Judgment for a Return &c. on Demurrer to Plea in bar.*

Victoria, [&c. as ante, 436,] to the sheriff of —, greeting: Whereas C. D. was summoned to be in our court before us, [or in C. P. "before our justices at Westminster," or in Exch. "before the barons of our Exchequer at Westminster,"] to answer A. B. of a plea wherefore the said C. D. on — [&c. as in declaration], at —, in a dwelling-house there and place there called —, took the [cattle,] goods and chattels of the said A. B. to wit, [&c. set out the goods as in the declaration,] and unjustly detained them against gages and pledges until &c. And the said C. D. appearing in our said court at Westminster, by D. A. his attorney, well avowed [or "as bailiff of M. M. well acknowledged"] the taking of the said [cattle,] goods and chattels [&c. recite the avowry or cognizance, plea in bar, demurrer and joinder:] And such proceedings were thereupon had in our said court, that it was afterwards considered by the same court that the said plea of the said C. D. by him above pleaded in bar of the avowry [or "cognizance"] aforesaid, and the matters therein contained, were not sufficient in law to bar the said C. D. from avowing [or "acknowledging"] the taking of the said [cattle,] goods and chattels in the said place in which &c. to be just, as the said C. D. hath above alleged. It was also considered by the same court, that the said A. B. should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy &c., and that the said C. D. should go thereof without day, &c., and that he have a return of the [cattle,] goods and chattels aforesaid, to hold to him irreplevisable for ever; and that he ought to recover against the said A. B. his damages on occasion of the premises, according to the form of the statute in such case made and provided. Therefore we command you, that without

delay you cause the [cattle,] goods and chattels aforesaid to be returned to the said C. D. to hold to him irreplevisable, in form aforesaid; and in what manner you shall execute this our writ make appear to us, immediately after the execution hereof, wheresoever we shall then be in England, *or in C. P.* "to our said justices (*or in Exch.* "to the said barons") at Westminster aforesaid, immediately after the execution hereof." We likewise command you, that by the oath of twelve good and lawful men of your bailiwick, you diligently inquire, according to the form of the statute in such case made and provided, what damages the said C. D. hath sustained, as well on occasion of the premises, as for his costs and charges by him laid out about his defence in this behalf [*or in C. P.* "on occasion of the premises," *omitting the costs*]: and the inquisition which you shall thereupon take, make appear to us at the time aforesaid, wheresoever we shall then be in England, [*or in C. P.* "to our said justices (*or in Exch.* "to the said barons") at Westminster aforesaid, at the time aforesaid,"] under your seal and the seals of those by whose oath you shall take that inquisition; and have there the names of those by whose oath you shall take that inquisition, and this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[Sec 2 Chit. Ar. Pr. 805, 806.]

88. *Retorno Habendo on Demurrer to a Plea in bar.*

[Same as in the form, ante, 438, No. 70, to the end of the avowry or cognizance, if it were the avowry or cognizance that was demurred to, and then thus]: And such proceedings were thereupon had in our said court, that it was afterwards considered by our same court here, that the said A. B. should take nothing by his said writ, but that he and his pledges to prosecute should be in mercy, and that the said C. D. should go thereof without day, and that he should have a return of the [cattle,] goods and chattels aforesaid, to hold to him irreplevisable for ever. Therefore we command you, that you cause to be returned to the said C. D. without delay the [cattle,] goods and chattels aforesaid, to hold to him irreplevisable for ever; and in what manner you shall have executed this our writ make appear to us on — (a), wheresoever we shall then be in England [*or in C. P.* "to our said justices (*or in Exch.* "to the said barons") at Westminster aforesaid, on —"] (a), and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

89. *The Fi. fa. or Ca. vi. thereon is same as ante, 441, No. 78.]*

90. *Judgment for Defendant under 17 Car. 2, c. 7, s. 2, on Demurrer to Avowries for Rent, with Award of Inquiry as to value of Goods.*

[Enter the proceedings to the end of the demurrer-book, and then proceed thus]: At which day come here the parties aforesaid, by their attorneys aforesaid, whereupon all and singular the premises being seen and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said several avowries [*or "cognizances"*] of the defendant by him above pleaded, and the matters

(a) See ante, 427, n.

therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law for the defendant to avow [or "acknowledge"] the taking of the [cattle,] goods and chattels in the said declaration mentioned, in the said dwelling-house [and place] in which &c. to be just, as the defendant hath above alleged. Therefore it is considered that the plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c.; and that the defendant do go thereof without day &c., and that he have a return of the [cattle,] goods and chattels aforesaid, to hold to him irreplevisable for ever. And hereupon the defendant, according to the form of the statute in such case made and provided, prays the writ of our said lady the queen to be directed to the sheriff of the said county of —, to inquire of the value of the [cattle,] goods and chattels aforesaid. Therefore the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick he diligently inquire how much the said [cattle,] goods and chattels were worth at the time of taking the same, according to their value; and that the inquisition which the said sheriff shall thereupon take, he make appear to our said lady the queen at Westminster, on —, wheresoever she shall then be in England, [or in C. P. "to the justices (or in Exch. "to the barons") here on —,"] under his seal and the seals of those by whose oath he shall take the said inquisition, and that he have there the names of those by whose oath he shall take the said inquisition, together with the writ of our said lady the queen, to him thereupon directed; the same day is given to the said A. B. [&c. if the inquisition has been returned, continue the entry as at post, 447, No. 94.]

[See 2 Chit. Ar. Pr. 805, 806.]

91. *Writ of Inquiry under 17 Car. 2, c. 7, s. 3, after Judgment for Defendant on Demurrer to Avowry.*

Victoria, [&c. ante, 436, No. 65,] to the sheriff of —, greeting: Whereas C. D. was summoned to be in our court before us [or in C. P. "before our justices (or in Exch. "before the barons of our Exchequer) at Westminster"], to answer A. B. of a plea; for that the said C. D. on [&c. as in the declaration] at [&c.] in a certain dwelling-house there, and place there, called — (as in the declaration), took the [cattle,] goods and chattels, to wit, [&c. set them out as in declaration,] of the said A. B. of great value, to wit, of the value of £—, and unjustly detained the same against sureties and pledges, until &c. And the said C. D. appearing in our said court by D. A. his attorney, came and defended the wrong and injury when &c., and well avowed [or "as bailiff of E. F. well acknowledged"] the taking of the said [cattle,] goods and chattels [&c. recite the avowry or cognizance, plea in bar, demurrer and joinder]: and such proceedings were thereupon had in our said court, in the same plea, that it was afterwards considered by the same court, that the said avowry [or "cognizance"] and the matters therein contained, were sufficient in law for the said C. D. to avow [or "make cognizance of"] the taking of the said [cattle,] goods and chattels, in the said declaration mentioned, in the said dwelling-house and place in which &c. to be just, as before alleged. It was also considered by the same court, that the said A. B. should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy &c. and that the said C. D. should go thereof without day &c.; and that he should have a return of the said [cattle,] goods and chattels &c.: And thereupon the said C. D., according to the form of the statute in such case made and provided,

prayed our writ to be directed to you, to inquire of the value of the [cattle,] goods and chattels aforesaid, and it was granted to him &c. as by the records and proceedings thereof still remaining in our said court at Westminster aforesaid, fully appears. Therefore we command you, that according to the form of the statute in such case made and provided, you diligently inquire by the oath of twelve good and lawful men of your bailiwick, how much the said [cattle,] goods and chattels were worth at the time of taking the same, according to their value, and the inquisition which you shall thereupon take make appear to us on —, wheresoever we shall then be in England, [or in C. P. “to our said justices (or in *Erch.* “the said barons”) at Westminster, on —,”] under your seal and the seals of those by whose oath you shall take the said inquisition, and have there the names of those by whose oath you shall take the said inquisition and this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

[See 2 *Chit. Ar. Pr.* 806.]

92. Notice of Inquiry on 17 Car. 2, c. 7, s. 3, on Judgment for Defendant on Demurrer.

In the Queen's Bench [or “Common Pleas.”]

A. B. against C. D.

Take notice, that a writ of inquiry will be executed in this cause on &c. [*ante*, 431], at &c. [*ante*, 431], touching the value of the distress, according to the form of the statute in such case made and provided. Dated the — day of —, 1840.

Yours &c.

To Mr. D. A.

defendant's attorney, [or “agent.”]

P. A. plaintiff's attorney,
[or “agent.”]

93. Inquisition on 17 Car. 2, c. 7, s. 3, on Judgment for Defendant on Demurrer.

—, to wit. An inquisition indented, taken at — [&c. *as ante*, 432, No. 50, to the asterisk*] who upon their oath say that the [cattle,] goods, and chattels, in the said writ mentioned, were worth, at the time of taking the same, according to their true value, the sum of £—. In witness whereof, as well I the said sheriff, as the said jurors, have set our seals to this inquisition the day and year, and at the place above written.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of S. S. sheriff.

94. Entry of final Judgment and Inquisition under 17 Car. 2, c. 7, s. 3, on Judgment on Demurrer to Avowries for Rent.

[Proceed as in the form, *ante*, 446, No. 90, to the end, and then thus:] At which day come here the parties aforesaid, by their attornies aforesaid, and the sheriff of —, to wit, S. S. now here, returns a certain inquisition indented, taken before him at —, in the said county, on (&c. *day of taking inquisition*), by the oath of twelve good and lawful men of his county, whereby it is found that the [cattle,] goods, and chattels, so as aforesaid taken and distrained, were worth, according to the true value thereof, at the said time of taking the same, the sum of £—. Therefore, according to the form of the statute in that case made and provided, it is considered that the defendant do recover against the plaintiff the

said sum of £——, the said value of the said [cattle,] goods, and chattels, so taken and distrained as aforesaid, and also £—— by the court here adjudged to the defendant, as and for his costs and charges by him laid out about his defence in this behalf, according to the form of the statute in such case made and provided; which said several sums amount in the whole to £——, and that the defendant have execution thereof &c.

95. *The Writs of Execution hereon are as ante, 433.*

96. *Issue (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the —— day of —— A.D. ——.

—— term (*the term of which the declaration is entitled*),
in the —— year of the reign of Queen Victoria.

—— to wit. C. D. was summoned to answer A. B. [*&c. copy the declaration to the end, and proceed on a new line as follows:*]

And on ——, the defendant, by D. A. his attorney, comes and defends the wrong and injury, when [*&c. copy all the pleadings:*] Therefore it is commanded to the sheriff, that he cause to come before our lady the queen, on ——, wheresoever our said lady the queen shall then be in England, [or in C. P. or Exch. "that he cause to come here on ——,"] twelve &c., by whom &c., and who neither &c., to recognize &c., because as well &c.; the same day is given to the parties aforesaid &c. [In C. P., *this dies datus is omitted.*]

[See 2 Chit. Ar. Pr. 805.]

97. *Notice of Trial.—Jury Process.*

[*These are the same as in ordinary cases, except that the plea or action is described as "a plea of taking and unjustly detaining the [cattle,] goods, and chattels of the said A. B."*]

98. *Nisi Prius Record(b).*

Pleas before the lady the queen at Westminster, [or in C. P. or Exch. "Pleas at Westminster before Sir N. C. T."] (*name of chief justice or chief baron*), knight, and his companions, justices of our lady the queen, of the bench,] of —— term, (*the term of which the declaration is entitled*), in the —— year of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, and in the year of our Lord 1840.

Roll ——, *Ellenborough.*

[In C. P. or Exch. omit the name of "Ellenborough."]

(a) As to the entry of warrants of attorney, see *ante*, 434, n. (a).

(b) The rules of H. T. 4 Will. 4, as to the form of the nisi prius record,

are not, it seems, applicable to a replevin suit. As to the entry of the warrants of attorney, see *ante*, 434, n. (a).

— to wit. C. D. was summoned to answer the said A. B. [&c. *here copy the whole of the declaration and issue, and award of venire, verbatim to the end, and then enter the second placita, and conclude as usual as directed in the form, ante, 379, in Q. B. or, as ante, 380, in C. P., except that you should describe the plea as "a plea of taking and unjustly detaining the [cattle,] goods, and chattels of the said A. B."*]

[See 2 Chit. Ar. Pr. 807.]

99. *Postea for Plaintiff on Non cepit.*

Afterwards, that is to say, on the day and at the place within contained, before the Right Honourable — (name of chief justice), the chief justice within mentioned, — being associated unto the said chief justice, come as well the within-named plaintiff by his attorney within mentioned, as the within-named defendant by his attorney within mentioned, and the jurors of the jury whereof mention is within made being summoned also come, who to speak the truth of the matters within contained, being chosen, tried, and sworn*, say upon their oath, that the defendant did take the within-mentioned [cattle,] goods, and chattels, in manner and form as the plaintiff hath within complained against him; and they assess the damages of the plaintiff on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to £—, and for those costs and charges to 40s. Therefore &c.

[See 2 Chit. Ar. Pr. 807.]

100. *The like, on several Issues.*

[*As supra to * and then thus:*] As to the first issue within joined between the parties aforesaid, upon their oath say, that the plaintiff did not hold or enjoy the within-mentioned [messuage or dwelling-house] and premises with the appurtenances as tenant thereof to the defendant, in manner and form as is within in the first avowry in that behalf alleged. And as to the second issue within joined between the parties aforesaid, the jurors aforesaid, upon their oath aforesaid, say, that at the time in that behalf within-mentioned, no part of the rent within specified was in arrear and unpaid from the plaintiff to the defendant, as the defendant hath within in his said avowry in that behalf alleged. And they assess the damages of the plaintiff on occasion thereof, over and above his costs and charges by him about his suit in that behalf expended, to £—, and for those costs and charges to 40s. Therefore &c.

101. *Judgment thereon.*

[*The same as ante, 438, 102, mutatis mutandis.*]

102. *Fi. fa. or Ca. sa. thereon.*

[*The same as ante, 436, 437.*]

103. *Postea at Common Law for a Return &c. on Verdict for Defendant.*

[*Proceed as in the form, ante, 445, No. 99, to the asterisk *; and then thus:*] Say upon their oath that [*&c. stating the finding of the jury for the defendant*], in manner and form as the said — hath within in pleading alleged. Therefore &c.

[*See 2 Chit. Ar. Pr. 807.*]

104. *Judgment at Common Law for a Return &c. on Verdict for Defendant.*

Therefore it is considered that the plaintiff take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy &c. and that the defendant do go thereof without day &c.; and that he have a return of the [cattle,] goods, and chattels aforesaid, to hold to him irreplevisable for ever: And it is further considered, that the defendant do recover against the plaintiff his damages aforesaid by the jury aforesaid in form aforesaid assessed, and also £—— for his costs and charges aforesaid, by the court here adjudged of increase to the defendant and with his assent, according to the form of the statute in such case made and provided; which said damages, costs, and charges in the whole amount to £——; and that the defendant have execution thereof &c.

[*See 2 Chit. Ar. Pr. 807, 808.*]

105. *Retorno habendo on Judgment for Defendant on Verdict, at Common Law.*

[*Proceed as directed in the form, ante, 440, No. 76, to the end of the avowry, and then thus:*] And such proceedings were thereupon had in our said court that it was afterwards considered by our same court that the said A. B. should take nothing by his said writ, but that he and his pledges to prosecute should be in mercy, and that the said C. D. should go thereof without day*, and that he should have a return of the [cattle,] goods, and chattels aforesaid, to hold to him irreplevisable for ever. Therefore we command you that you cause to be returned to the said C. D. without delay, the [cattle,] goods, and chattels aforesaid, to hold to him irreplevisable for ever; and in what manner you shall have executed this our writ make appear to us, on — (a), wheresoever we shall then be in England, [*or in C. P. "to our justices," or in Exch. "the said barons at Westminster, on —"*]; and have you there this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 809.*]

106. *The Fi. fa. or Ca. sa. for Costs is the same as ante, 201, 202, mutatis mutandis.*

(a) See ante, 427, n.

107. *Postea under 21 Hen. 8, c. 19, on Verdict for Defendant.*

[*Proceed as in the form, ante, 449, No. 99, to the asterisk*, and then thus:*] Say upon their oath [&c. *state the finding of the jury for the defendant*], in manner and form as the said — hath within in pleading alleged; and at the prayer of the defendant, according to the form of the statute in such case made and provided, they assess the damages of the defendant by reason of the premises, besides his costs and charges by him about his defence in this behalf laid out and expended, to £—, and for those costs and charges to 40s. Therefore &c.

[*See 2 Chit. Ar. Pr. 807.*]

108. *Judgment under 21 Hen. 8, c. 19, on Verdict for Defendant.*

Therefore it is considered that the plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy &c., and that the defendant do go thereof without day &c., and that he have a return of the said [cattle,] goods, and chattels, to hold to him irreplevisable for ever; and it is further considered that the defendant do recover against the plaintiff his said damages, costs, and charges, by the jurors aforesaid in form aforesaid assessed, and also £— for his said costs and charges by the court here adjudged of increase to the defendant, and with his assent, according to the form of the statute in such case made and provided; which said damages, costs, and charges, in the whole, amount to £—; and that the defendant have execution thereof, &c.

[*See 2 Chit. Ar. Pr. 807.*]

109. *Retorno habendo under 21 Hen. 8, c. 19, after Verdict for Defendant on a Distress for Rent.*

Victoria, [&c. *as ante, 436,*] to the sheriff of —, greeting: Whereas C. D. was summoned to be in our court [&c. *as ante, 438, No. 70.*] And the said C. D. appearing in our said court by D. A. his attorney, defended the wrong and injury when &c., and well avowed [&c. *recite the avowry, omitting the verification at the end.*] And the said A. B. in and by certain pleas in bar of the said avowry, said, that [*here state the substance of the pleas in bar without stating the conclusions to the country*], in manner and form as the said C. D. had above in his said avowry in that behalf alleged. And afterwards, by a certain jury of the country, upon which as well the said C. D. as the said A. B. had put themselves in that behalf, taken on the — day of —, in the — year of our reign, at — in your county, before —, one of the justices assigned to hold pleas before the queen herself, and —, one of the justices &c. justices of our said lady the queen appointed to take the assizes for your said county, according to the form of the statute in that case made and provided [*or if not at the assizes, see the form, infra, No. 110*], it was found, that [*here state the finding of the jury in substance, as in the postea:*] Whereupon it was afterwards considered in our said court, that the said A. B. should take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy &c., and that the said C. D. should go thereof without day &c., and that he have a return of the cattle, goods, and chattels aforesaid, to hold to him irreplevisable for ever. And it was further considered, that the said C. D. should recover against the said A. B. his damages aforesaid, by the jury aforesaid in form aforesaid assessed, and also £— for his costs and charges aforesaid, by the said

court adjudged of increase to the said C. D. and with his assent, according to the form of the statute in such case made and provided; which said damages, costs and charges in the whole amount to £——, and that the said C. D. have execution thereof &c. Therefore we command you, that without delay you cause the cattle, goods, and chattels aforesaid to be returned to the said C. D. [&c. conclude as in the next form, No. 110.]

110. *Retorno habendo, under 21 Hen. 8, c. 19, after Verdict for Defendant, on a Distress for Damage feasant, and Fi. fa. for Damages and Costs in one Writ.*

Victoria, [&c. as ante, 436,] to the sheriff of ——, greeting: Whereas C. D. was summoned to be in our court [&c. as ante, 438, No. 70.] And the said C. D. appearing in our said court by D. A. his attorney, defended the wrong and injury when &c., and alleged and said that he took the cattle, goods, and chattels aforesaid, in the said place in which &c. being the soil and freehold of the said C. D. doing damage there; and the said C. D. prayed a return of the said cattle, goods, and chattels, to be adjudged to him &c. And afterwards, by a certain jury of the country, upon which as well the said C. D. as the said A. B. had put themselves in that behalf, taken on the —— day of ——, in the —— year of our reign, at —— in your county, before —— (*name of chief justice*), our chief justice &c. by virtue of our writ of nisi prius [*or if at the assizes, see the preceding form*], it was found, that the said place in which &c., at the said time when &c., was the soil and freehold of the said C. D. as the said C. D. had alleged; and the jurors of the said jury, according to the form of the statute in such case made and provided, assessed the damages of the said C. D. on occasion of the premises, besides his costs and charges by him laid out about his defence in this behalf, to £——, and for those costs and charges to —s. Whereupon it was afterwards considered in our said court, that the said A. B. should take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy &c., and that the said C. D. do go thereof without day &c., and that he have a return of the cattle, goods, and chattels aforesaid, to hold to him irreplevisable for ever. And it was further considered that the defendant should recover against the said A. B. his damages aforesaid, by the jurors aforesaid in form aforesaid assessed, and also £—— for his costs and charges aforesaid by the same court adjudged of increase to the said C. D. and with his assent, according to the form of the statute in such case made and provided, which said damages, costs, and charges in the whole amount to £——, and that the said C. D. have execution thereof. Therefore we command you, that without delay you cause the cattle, goods, and chattels aforesaid to be returned to the said C. D. to hold to him irreplevisable in form aforesaid; and in what manner you shall execute this our writ make appear to us on —— (a), wheresoever we shall then be in England [*or in C. P. "to our said justices," or in Erc. "the said barons at Westminster on ——."*] We also command you, that of the goods and chattels of the said A. B. in your bailiwick, you cause to be made the said £—— for the damages, costs, and charges aforesaid; together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. ——, on which day the judgment aforesaid was entered up, [*or if entered up before the 1st Oct. 1838, say "from the 1st day of October, A. D. 1838," and omit the*

(a) See ante, 427, n.

words "on which day the judgment aforesaid was entered up,"] and have that money before us [or in C. P. "before our said justices," or in Exch. "the said barons at Westminster aforesaid"] at the aforesaid time, to render to the said C. D. for his damages, costs, and charges, and interest aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear [&c. *as supra*], and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 809.]

111. *The Fi. fa. or Ca. sa. for Damages and Costs is as ante, 441.*

[See 2 Chit. Ar. Pr. 809.]

112. *Postea on Verdict for Defendant under 17 Car. 2, c. 7, s. 2.*

[As in the form, ante, 449, No. 99, to the*, and then thus:] as to the issue within joined between the parties aforesaid, upon their oath aforesaid say, that [here state the finding of the jury for the defendant], in manner and form as is in pleading in that behalf within alleged. And the jurors aforesaid, at the prayer of the defendant, according to the form of the statute in such case made and provided, having proceeded to inquire concerning the sum of the arrears of the rent within specified, and the value of the goods and chattels distrained, upon their oath aforesaid further say, that the sum of such arrears was £—, and that the goods and chattels were of the true value of £— aforesaid. Therefore &c.

[See 2 Chit. Ar. Pr. 807.]

113. *Judgment on Verdict for Defendant, under 17 Car. 2, c. 7, s. 2.*

Therefore it is considered that the plaintiff take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy &c., and that the defendant do go thereof without day &c. It is also considered, that the defendant do recover against the plaintiff the said £—, being the sum of the arrears aforesaid in form aforesaid assessed, and also £— by the court here adjudged to the defendant, and with his assent, according to the form of the statute in such case made and provided, for his costs and charges by him laid out about his defence in this behalf; which said arrears, costs, and charges in the whole amount to £—; and that the defendant have execution thereof &c.

[See 2 Chit. Ar. Pr. 808.]

114. *The like, where Value of Goods was found to be less than the Rent.*

Therefore it is considered that the plaintiff take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy &c., and that the defendant do go thereof without day &c. It is also considered that the defendant do recover against the plaintiff the said £— for parcel of the arrears of the said rent, being the value of the [cattle,] goods, and chattels aforesaid, so by the jury in form aforesaid found; and also £— for his costs and charges by him about his defence in this behalf laid out and expended, by the court here adjudged to the defendant, and with his assent, according to the form of the statute in such case made and provided; which said value, costs, and charges in the whole amount to £—; and that the defendant have execution thereof &c.

115. *The Fi. fa. or Ca. sa. thereon is the same as in the forms, ante, 433.*

116. *Postea, at Common Law, for Defendant, upon a Nonsuit.*
[Same as ante, 87, mutatis mutandis.]

117. *Judgment, at Common Law, for a Return, &c. on a Nonsuit.*

Therefore it is considered that the plaintiff take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy &c., and that the defendant do go thereof without day, and that he have a return of the [cattle,] goods, and chattels aforesaid. And it is further considered that the defendant do recover against the plaintiff £—— for his costs and charges by him laid out about his defence in this behalf, by the court here adjudged to the defendant, and with his assent, according to the form of the statute in such case made and provided; and that the defendant have execution thereof &c.

[See 2 Chit. Ar. Pr. 808.]

118. *Retorno habendo thereon.*

[Same as ante, 450, No. 105, to the asterisk, and then thus:]* and that he should have a return of the [cattle,] goods, and chattels aforesaid. Therefore we command you, that you cause to be returned to the said C. D. without delay the [cattle,] goods, and chattels aforesaid, and the same at the complaint of the said A. B. you do not deliver without our writ, which shall make express mention of the judgment aforesaid; and in what manner you shall have executed this our writ make appear to us on —— (a), wheresoever we shall then be in England, [or in C. P. “to our justices, (or in Exch. “the said barons”) at Westminster, on ——,”] and have you there this writ. Witness —— (name of chief justice or chief baron), at Westminster, the —— day of ——, in the year of our Lord ——.

119. *The Fi. fa. or Ca. sa. is as directed, ante, 201, 202, and see the Capias in Withernam, ante, 441, No. 79.*

120. *Postea under 21 Hen. 8, c. 19, upon a Nonsuit.*

[Proceed as in the form, ante, 87, No. 1, to the end, and then thus:] And hereupon the defendant, according to the form of the statute in such case made and provided, prays that the said jurors of the jury may inquire of and assess the damages by him sustained on occasion of the premises. And the jurors of the jury aforesaid, being sworn, say upon their oath that the defendant hath sustained damage to £—— on occasion of the premises, over and above his costs and charges by him about his suit in this behalf expended, and for those costs and charges to 40s. Therefore &c.

[See 2 Chit. Ar. Pr. 808.]

(a) See ante, 427, n.

121. *The Judgment thereon is the same as ante, 451, No. 108, omitting the words, "to hold to him irreplevisable for ever."*

122. *The Retorno habendo thereon is the same as ante, 451, No. 109, omitting the words, "to hold to him irreplevisable for ever."*

123. *The Capias in Withernam thereon is as ante, 441. The Fi. fa. or Ca. sa. thereon is as ante, 201, 202.*

124. *Postea for Defendant, under 17 Car. 2, c. 7, on a Nonsuit.*

[*Proceed as in the form, ante, 87, No. 1, to the end, and then thus:*] And hereupon the defendant, according to the form of the statute in such case made and provided, prays that the said jurors of the jury may inquire of the sum in arrear of the rent in pleading mentioned, at the time of the taking of the distress within mentioned, and also of the value of the [cattle,] goods, and chattels so distrained, as within is mentioned, according to the true value thereof. And the jurors of the jury aforesaid, being sworn, say upon their oath that £—— of the said rent was in arrear and due to the defendant from the plaintiff at the time of the said taking of the said [cattle,] goods, and chattels as aforesaid; and that the said [cattle,] goods, and chattels were then worth £——, according to the true value thereof. Therefore &c.

[*Sec 2 Chit. Ar. Pr. 808.*]

125. *Judgment thereon.*

[*Same as ante, 453, Nos. 113, 114.*]

126. *Fi. fa. or Ca. sa. thereon.*

[*Same as the forms directed, ante, 433.*]

127. *Writ of false Judgment.*

Victoria, [*&c. as ante, 436, No. 65,*] to the sheriff of ——, greeting: If *C. D.* shall give you security to prosecute his suit, then, in your full county court, cause the plaint to be recorded, which was in the same county court without our writ, between *A. B.* and the said *C. D.* of a plea of taking and unjustly detaining the [cattle,] goods, and chattels of the said *A. B.* as it is said, wherein the said *C. D.* complaineth that false judgment hath been given against him in the said county court; and that you have the said record before our justices at Westminster, on ——, under your seal, and the seals of four lawful knights of the same county, of such as shall be present at the said recording; and summon, by good summoners, the aforesaid *A. B.* that he be then there to hear the said record; and have you there the summoners, the names of the said four knights, and this writ. Witness ourself at Westminster, the —— day of ——, in the year of our Lord ——.

[*Sec 2 Chit. Ar. Pr. 346.*]

128. *Rule to assign Errors upon a Writ of false Judgment.*

C. D. } Unless the defendant within four [or "eight"] days next after
v. } notice of this rule to him, or his attorney or agent, given, shall
A. B. } assign errors in this cause, let there be a writ of execution upon
the judgment in the county court of —.

By the Court.

Side bar at the plaintiff's instance.

129. *Assignment of false Judgment.*

C. D. } And hereupon the said *C. D.* says, that the record aforesaid is
v. } vicious and in many respects defective, and that false judgment is
A. B. } given against him in and upon the plaint aforesaid in this, to wit,
that the supposed promises in the said declaration mentioned do not appear
in or by the said declaration to have been made within the jurisdiction of
the county court of the sheriff of the county aforesaid; and also in this,
to wit, that by the record aforesaid it appears that the judgment aforesaid,
in form aforesaid given, was given for the said *A. B.* against the said
C. D., whereas by the law of the land the said judgment ought to have
been given for the said *C. D.* against the said *A. B.* And so the said
C. D. says, that in the said court of the said county false judgment hath
in divers instances been given against him in the plaint aforesaid, and he
prays that the said judgment for the above and other defects in the record
aforesaid may be reversed, annulled, and altogether held for nothing, as
being false and of no effect, and that the said *C. D.* may be restored to
all things which he has lost by occasion of the said judgment &c.

CHAPTER III.

SCIRE FACIAS (a).

- SECT. I. *To revive a Judgment after a Year and a Day, 457 to 473.*
 II. *Upon the Death of Parties after final Judgment, and before Execution, 474 to 487.*
 III. *Upon the Death of Parties after Verdict, and before Judgment, 487.*
 IV. *Upon the Death of Parties between interlocutory and before final Judgment, 488 to 491.*
 V. *Upon the Death of one of several Parties, 491 to 493.*
 VI. *Upon the Marriage of a Feme Plaintiff or Defendant, 493, 494.*
 VII. *In case of Bankruptcy, 494, 495.*

SECT. I.—SCIRE FACIAS TO REVIVE A JUDGMENT AFTER A YEAR AND A DAY.

1. *Rule for Scire facias on Judgment, above Seven and under Ten Years old.*

On —, the — day of —.
 B. } It is ordered, that the queen's writ of *scire facias* be issued forth,
 v. } upon a judgment obtained by the plaintiff against the defendant, in
 D. } — term, in the year of our Lord —, and entered on record in
 this court of the same day, for £— [debt and £—] damages.
 Side Bar. By the Court.

[See 2 Chit. Ar. Pr. 831.]

2. *Affidavit for leave to sue out Writ on a Judgment above Ten and under Twenty Years old.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

A. B. of —, —, the above-named plaintiff, maketh oath and saith,
 that in — term, in the year of our Lord —, this deponent recovered a

(a) As to the forms in Scire Facias on a judgment after error brought, see ante, 124. On a judgment in debt on bond, see ante, 353. On a judg-

ment quando, &c. against an executor, &c. see post. Against bail, see ante, 274 to 286, 291.

judgment of this honourable court in this action against the above-named C. D. for £—— debt and —— damages [or in *assumpsit*, *covenant*, *case*, or *trespass*, say “for £—— damages”], and that the said judgment still remains wholly unpaid and unsatisfied, [or if part of it has been paid, say “and that the sum of £——, part thereof, still remains wholly due, unpaid, and unsatisfied,”] and the said judgment remains in full force, and execution thereof still remains to be made to him: And this deponent further saith, that [&c. here state any other matter to induce the court or judge to grant the rule or order.]

[See 2 Chit. Ar. Pr. 831, 832.]

3. Rule thereon.

On the —— day of ——, A.D. ——.

B.) It is ordered, that a writ of our lady the queen of *scire facias*
v.) be issued against the defendant, upon a judgment obtained by the
D.) plaintiff in —— term, in the year of our Lord ——, and entered
on record of the same day, for £—— damages [or if in debt, say
“£—— debt and £—— damages.”] But no execution shall be issued
thereupon, unless the sheriff shall return on the said writ, that he hath
made known to the said defendant, according to the tenor thereof, or an
affidavit shall be made in writing, that personal notice of the said writ
having been prosecuted, hath been given to the said defendant. On the
motion of Mr. —— for the plaintiff. By the Court.

[If the judgment be more than fifteen years old, there must be a rule to show cause. See 2 Chit. Ar. Pr. 831.]

4. *Præcipe for the Writ.*

—— (to wit). *Scire facias* to [revive] for A. B. against C. D. for £—— damages [or if in debt, “£—— debt and £—— damages;” or in *ejectment*, “for his possession of his farm”], returnable on ——.

P. A. attorney, 1840.

[See 2 Chit. Ar. Pr. 832.]

5. *Scire Facias to revive a Judgment in Debt for Plaintiff, after a Year.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting: Whereas A. B. lately in our court before us at Westminster, [or in C. P. “in our court of the Bench at Westminster, before ——, chief justice, and his companions, our justices of the said Bench,” or in *Exch.* “in our court before the barons of our Exchequer at Westminster,”] by the judgment of the same court*, recovered against C. D. as well a certain debt of £—— as also £—— which in our same court were awarded to the said A. B. for his damages which he sustained, as well by reason of detaining the said debt as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as by the record and proceedings thereof still remaining in our same court manifestly appears [or in *Exch.* “whereof the said C. D. is convicted, as by inspecting the rolls of the said Exchequer appears to us.”]† And now, on behalf of the said A. B. in our same court, we are informed, that although judgment be thereupon given, yet execution of the debt and damages aforesaid still remains to be made to him; wherefore the said A. B. hath humbly besought us to provide him a proper remedy in this

behalf; and we, being willing that what is just in this behalf should be done, [*or in C. P. or in Exch. "that those things which in our same court are rightly done should be duly carried into execution, and that what is just in this behalf should be done,"*] command you, that by honest and lawful men of your bailiwick you make known to the said C. D. that he be before us at Westminster, on —, [*or in C. P. "before our justices at Westminster, on —," or in Exch. "before the said barons at Westminster, on —,"*] to show if he has or knows of any thing to say for himself why the said A. B. ought not to have execution against him of the debt and damages aforesaid, according to the force, form, and effect of the said recovery, if it shall seem expedient for him so to do; and further to do and receive what our said court shall then and there consider of him in this behalf [*or in Exchequer, instead of this last sentence, "and further," &c. say "and in what manner you shall execute this our writ make appear to the said barons at Westminster, on — :"*] and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (*name of chief justice, or in Exch. name of chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 817, 831.*]

6. *The like, in Assumpsit.*

Victoria, [*&c. as in the preceding form to the asterisk*, and then thus:*] recovered against C. D. £—— for his damages which he had sustained, as well on occasion of the not performing certain promises [*or "promise"*] then lately made by the said C. D. to the said A. B. as for his costs [*&c. conclude as in the preceding form, but instead of "debt and damages," say "damages."*]

7. *The like, in Covenant.*

Victoria, [*&c. as ante, 458, No. 5, to the asterisk*, and then thus:*] recovered against C. D. £—— for his damages which he had sustained, as well on occasion of the breach of a certain covenant made between the said A. B. and the said C. D. as for his costs [*&c. conclude as ante, 458, No. 5, but instead of "debt and damages," say "damages."*]

8. *The like, in Case.*

Victoria, [*&c. as ante, 458, No. 5, to the asterisk*, and then thus:*] recovered of C. D. the sum of £—— for his damages which he had sustained, as well on occasion of a certain grievance then lately committed by the said C. D. as for his costs [*&c. conclude as ante, 458, No. 5, but instead of "debt and damages," say "damages."*]

9. *The like, in Trespass.*

Victoria, [*&c. as ante, 458, No. 5, to the asterisk*, and then thus:*] recovered against C. D. £—— for his damages which he had sustained, as well on occasion of certain trespasses then lately committed by the said C. D. as for his costs [*&c. conclude as ante, 458, No. 5, but instead of "debt and damages," say "damages."*]

10. *The like, in Ejectment by Original, in Q. B. (a)*

Victoria, [&c. *as ante*, 458, No. 5,] to the sheriff of —, greeting: Whereas *John Doe* lately in our court before us at Westminster, by our writ and by the judgment of the same court, recovered against *C. D.* [*or if against the casual ejector "Richard Roe"*] his term then and yet to come of and in the two messuages [&c. *as in the declaration*], with the appurtenances, in the parish of — in your county, which *L. P.* on (&c. *day of demise of declaration*) had demised to the said *John Doe*, to have and to hold the same to the said *John Doe* and his assigns from thenceforth (*as in declaration*) for and during and until the full end and term of — years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said *John Doe* entered into the tenements aforesaid, with the appurtenances, and was thereof possessed, until the said *C. D.* [*or "Richard Roe"*] afterwards, to wit, on (&c. *as in declaration*), with force of arms &c. entered into the tenements aforesaid, with the appurtenances, which the said *L. P.* had demised to the said *John Doe* in manner and for the term aforesaid, which is not yet expired, and ejected the said *John Doe* from his said farm; and also £—— for the damages which the said *John Doe* had sustained as well on occasion of the trespass and ejectment aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* [*or "Richard Roe"*] is convicted, as appears to us of record: And now, on behalf of the said *John Doe*, in our said court, we have been informed, that although judgment be thereupon given, yet execution of that judgment still remains to be made to him, wherefore the said *John Doe* hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, command you, that by honest and lawful men of your bailiwick you make known to the said *C. D.* [*or "Richard Roe"*] that he be before us on —, wheresoever we shall then be in England, to show if he has or knows of any thing to say for himself [*or if against the casual ejector, the sheriff should be commanded "to make known to the said Richard Roe, and also to — and —, the tenants of the tenements aforesaid, that they be before us on —, wheresoever we shall then be in England, to show if they have or know, or if either of them hath or knoweth of any thing to say for themselves or himself"*] why the said *John Doe* ought not to have the possession of his said term yet to come of and in the tenements aforesaid, and also execution of the damages, costs, and charges aforesaid, according to the force, form, and effect of the said recovery, if it shall seem expedient for him; and further to do and receive what our said court before us shall consider of him [*or "them"*] in this behalf: And have there the names of those by whom you shall so make known to him [*or "them"*] and this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

11. *The like, in Exchequer (b).*

Victoria, [&c. *as ante*, 458, No. 5,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court before the barons of our Exchequer at Westminster, by the consideration and judgment of our same court, recovered [&c.

(a) See the form, Tidd's Forms, 657.

(b) *Id.* 658.

as in the preceding form to the words "whereof the said C. D. is convicted," and then thus:] as by inspecting the rolls of our said Exchequer appears to us: Yet execution of the said judgment still remains to be made, as by the information of the said *L. P.* in our said court we have been given to understand: And we being willing that those things which in our said court are rightly done, should have due execution, command you, that by honest and lawful men of your bailiwick you make known [*&c. as in the preceding form to the words "expedient for him," but making the writ returnable* "before the barons of our said Exchequer at Westminster, on —:"] And in what manner you shall execute this our writ make appear to the barons of our said Exchequer at Westminster, at the day aforesaid; and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (*name of chief baron*), the — day of —, in the year of our Lord —.

12. *The like, in Replevin.*

[*See the forms, ante, 458, No. 5, and ante, 437, No. 67.*]

13. *Scire Facias to revive a Judgment for Defendant.*

Victoria, [*&c. as ante, 458, No. 5, to the asterisk*, and then thus:*] recovered against *A. B.* £—— which in the same court were adjudged to the said *C. D.* according to the form of the statute in such case made and provided, for his costs and charges by him laid out in and about his defence of and in a certain action of debt [*or "promises," or as the action was*] before then commenced and depending in our same court, by and at the suit of the said *A. B.* against the said *C. D.* whereof the said *A. B.* is convicted [*&c. as ante, 458.*] And now, on the behalf of the said *C. D.* in our said court, we have been informed, that although judgment be thereupon given, yet execution of the costs and charges aforesaid still remain to be made to him; wherefore the said *C. D.* hath humbly besought us to provide him a proper remedy in this behalf: And we being willing [*&c. proceed as ante, 458, No. 5, but requiring plaintiff*] "to show if he hath or knoweth of any thing to say for himself why the said *C. D.* ought not to have his execution against him of the costs and charges aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient for him; and further to do and receive" [*&c. conclude as ante, 458, No. 5.*]

[*See 2 Chit. Ar. Pr. 817.*]

14. *Scire Facias after a former revival.*

Victoria, [*&c. as ante, 458, No. 5,*] to the sheriff of —, greeting: Whereas *A. B.* lately in our court [*&c. state the judgment as ante, 458 to 460;*] whereof the said *C. D.* is convicted, as appears to us of record [*or if in C. P. or Erch. see ante, 458, No. 5*]; and whereupon it was afterwards considered in our said court that the said *A. B.* should have his execution against the said *C. D.* of the damages [*or if in debt, "debt and damages"*] aforesaid, according to the force, form and effect of the said recovery, as also appears to us [*or if in C. P. or Erch. see ante,*

458, No. 5] of record: And now on behalf of the said *A. B.* in our said court we have been informed, that although judgment be thereupon given, and execution awarded in form aforesaid, yet execution of the damages [*or if in debt, "debt and damages"*] aforesaid still remains to be made to him; wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, command you that by honest and lawful men of your bailiwick, you make known to the said *C. D.* that he be before us at Westminster, on —, [*or if in C. P. or Erch. see ante, 458, No. 5,*] to show if he has or knows of any thing to say for himself why the said *A. B.* ought not to have his execution against him, of the damages [*or if in debt, "debt and damages"*] aforesaid, according to the force, form and effect of the said recovery and award of execution, if it shall seem expedient for him; and further to do [*&c. as in form, ante, 458, No. 5, to the end.*]

[*See 2 Chit. Ar. Pr. 837.*]

15. *Scire Facias in Q. B. to a County Palatine.*

Victoria, [*&c. as ante, 458, No. 5,*] to our chancellor of our county palatine of Lancaster [*or "Durham" (a),*] or to his deputy there, greeting: Whereas *A. B.* lately in our court before us at Westminster, by the judgment of the same court, recovered [*&c. state judgment, and proceed as in form, ante, 458, No. 5, to the mandatory part of the writ exclusive, and then as follows:*] command you, that by our writ under the seal of our said county palatine to be duly made and directed to the sheriff of the said county palatine, you command the said sheriff, that by good and lawful men of his bailiwick he make known [*&c. as before*] and have you there then the names of those by whom the said sheriff shall so make known to him and this writ. Witness &c. [*a form in C. P. or Erch. may be readily framed from this.*]

16. *Warrant on the Writ.*

To *B. B.* and *T. B.* my bailiffs.

— to wit. By virtue of her majesty's writ to me directed and delivered, I command you that you summon *C. D.* that he be before our lady the queen [*or in C. P. "before the justices of our lady the queen of the bench," or in Erch. "before the barons of her majesty's Exchequer"*] at Westminster, to show if he has or knows of any thing to say for himself why the said *A. B.* ought not to have execution against him for £— debt and £— damages [*or if not in debt alter as in sci. fa.*], according to the force, form and effect of a certain recovery by the said *A. B.* against the said *C. D.* Dated the — day of — A. D. —.

S. S. esq., sheriff.

17. *Summons upon the above Warrant.*

By virtue of her majesty's writ to the sheriff of — directed and delivered, and of the said sheriff's warrant to us thereon, we do hereby summon you that you be in the court of our lady the queen before the

(a) See, as to Durham, ante, 21, n. (b).

queen herself [*or in C. P.* "before the justices of her majesty's court of the bench," *or in Exch.* "before the barons of her majesty's Exchequer"] at Westminster, on —, to show if you have or know of any thing to say for yourself why *A. B.* ought not to have execution against you for £— debt and £— damages [*or if not in debt alter as in sci. fa.*], according to the force, form and effect of a certain recovery by the said *A. B.* against you. Dated the — day of —, A.D. —.

To Mr. *C. D.*
of — in the
county of —.

B. B.
T. B.

[*See 2 Chit. Ar. Pr. 833.*]

18. *Notice to defendant &c. of the Scire Facias, where he cannot be summoned on it (a).*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

Sir,

Herewith you will receive a copy of a scire facias issued in this case [*deliver such copy*], which was issued on —, and was left in the sheriff of —'s public office on —, where the same is now lodged; and in default of your appearing thereto judgment will be obtained thereon against you. Dated the — day of —, 1840.

Your's &c.

To Mr. —.

P. A. of —, plaintiff's attorney
[*or "agent."*]

[*See 2 Chit. Ar. Pr. 832, 833.*]

19. *Return of Scire feci.*

By virtue of this writ to me directed, I have by *B. B.* and *T. B.* honest and lawful men of my bailiwick, given notice to the within-named *C. D.* to be and appear before our lady the queen, [*or "the justices" or "barons of our lady the queen"*], at the day and place within contained, to show &c. as within he is required, and as I am commanded.

The answer of *S. S.* sheriff.

[*See 2 Chit. Ar. Pr. 832, 833.*]

20. *Return of Nihil.*

The within-named *C. D.* hath not any thing in my bailiwick whereby I can make known to him, as within I am commanded, nor is he found in the same.

The answer of *S. S.* sheriff.

[*See 2 Chit. Ar. Pr. 832, 833.*]

21. *Scire feci as to one, and Nihil as to another.*

By virtue of this writ to me directed by *B. B.* and *T. B.* honest and

(a) See the form of notice to bail of a scire facias on their recognizance, *ante*, 277.

lawful men of my bailiwick; I have given notice to the within-named *C. D.* to be and appear before our lady the queen, [or "the justices" or "barons of the lady the queen"], at the day and place within contained, to show &c. as by the said writ he is required, and as I am within commanded. But the within-named *E. F.* hath not any thing in my bailiwick where or by which I can give him notice, as I am within commanded, nor is the said *E. F.* found in the same.

The answer of *S. S.* esquire, sheriff
[See 2 *Chit. Ar. Pr.* 831, 833.]

22. *Alias Scire Facias.*

[*This writ is the same as the scire facias, but you must insert the words "as before we have commanded you," after the words "command you," and of course make a different teste and return. This writ, as will be seen in 2 Chit. Ar. Pr. 833, is now rarely issued, and is in general unnecessary.*]

23. *Memorandum for Rule to appear.*

[See the form, ante, 277.]

24. *Affidavit to obtain leave of Court or a Judge to sign Judgment on return of Nihil to one Scire Facias(a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant

P. A. of —, in the parish of —, in the county of —, gentleman, attorney for the above-named plaintiff in this cause, maketh oath and saith, that on the — day of —, A.D. —, the above-named plaintiff recovered a judgment in this honourable court against the above-named defendant for £—: And this deponent further saith, that on the — day of — now last past, a writ of scire facias directed to the sheriff of — was duly issued out of this honourable court to revive the said judgment, and which was returnable on —: And this deponent further saith, that he duly caused the said writ of scire facias to be lodged on the — day of —, at the public office of the said sheriff, and that the same was accordingly lodged and left there upwards of four clear searching days, exclusive of any Sunday or holiday, next immediately before the return day thereof, and that the said sheriff has duly returned to the said writ that the said defendant had not any thing in his bailiwick whereby he could give notice as he was commanded, nor was he found in the same: And this deponent further saith, that the said defendant did not, as this deponent is informed and verily believes, reside, nor was he within the said county of —, at any time between the issuing of the said writ of scire facias and the day after the return day thereof: And this deponent further saith, that he did on — personally serve the said defendant with a true copy of the said writ of scire facias, and with a true copy of the notice hereto annexed.

(a) See the form of affidavit on proceedings against bail, ante, 278, &c.: and see the form of the affidavit where there were two scire facias, *Chit. Sum. Prac.* 24.

[If the service was not personal, state the mode of service accordingly. See form, ante, 271, No. 10. If you could not serve the defendant, then make the statement in the note, infra (a) or something to that effect.] And this deponent further saith, that a rule on the said scire facias in this cause was given on the — day of —, but the said defendant hath not appeared thereto: And this deponent further saith, that eight days have expired since the return of the said writ of scire facias. P. A.

Sworn [&c. as ante, 207.]

[See 2 Chit. Ar. Pr. 833, 834.]

25. *Judge's Fiat thereon.—Præcipe for Rule for Judgment.—Rule for Judgment.* See the forms, ante, 279.

26. *Entry on Roll of Judgment by default for want of Appearance, in Q. B. or Exch.*

On the — day of —, A.D. — (date of teste of scire facias). Witness — (name of chief justice).

[In the Exchequer, commence with the placita "Pleas &c." as ante, 379.]

— (to wit). Our lady the queen sent to her sheriff of — her writ close in these words, that is to say: Victoria [&c. copy the scire facias to the teste inclusive, and then proceed thus:] At which day, before our said lady the queen at Westminster, comes [or in Exchequer, "At which day comes here"] the said A. B. in his proper person*, and the sheriff, to wit, S. S. sheriff of — aforesaid, now here returns, that by B. B. and T. B., honest and lawful men of his bailiwick, he has given notice to the said C. D. to appear before our said lady the queen, [or in Exchequer, "before the barons of her majesty's Exchequer,"] at the day and place in the said writ mentioned, to show cause as by the said writ he is required, and as by the said writ the said sheriff is commanded*, and the said C. D., although on that day solemnly demanded, comes not but makes default: Therefore it is considered that the said A. B. have his execution against the said C. D. of the damages [or in debt, "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery, by the default of the said C. D. &c. It is also considered by the court here, that the said A. B. do recover against the said C. D. £—, for his costs and charges by him about his suit in this behalf by the said court now here adjudged to the said A. B. and with his assent, according to the form of the statute in such case made and provided (b).

(a) "And this deponent made diligent inquiries after the said defendant, and endeavoured to give him notice of the said proceedings, but could not do so," [or according to the fact, as follows]; "And this deponent further saith, that he is informed and verily believes, that if the said defendant had had actual notice of the said proceedings, or either of them, he

would have removed and secreted and have disposed of his goods and chattels, and have absconded, so as to prevent the said plaintiff from levying execution upon any judgment awarded upon the said proceeding in scire facias." [State any other facts calculated to induce the court or judge to give leave to sign judgment.]

(b) 3 & 4 Will. 4, c. 42, s. 34.

[If nihil was returned, then instead of the entry of the return of scire feci as above, between the asterisks*, enter a return of nihil thus: "And the sheriff, to wit, S. S. sheriff of — aforesaid, now here returns, that the said C. D. hath nothing in his bailiwick where or by which he can make known to him as by the said writ he is commanded, nor is the said C. D. found in the same."] (a)

[See 2 Chit. Ar. Pr. 834.]

27. The like, in C. P.

In the Common Pleas.

On — (teste of sci. fa.) in the — year of the reign of Queen Victoria.

— (to wit): The sheriff was commanded, whereas A. B. lately in the court of the lady the queen here, to wit, on the — day of —, A. D. —, before Sir — (name of chief justice), knt., and his companions, then her majesty's justices of the Bench here, to wit, at Westminster, by the consideration and judgment of the same court, recovered [&c. recite the writ of scire facias, until the words "as on the information of the said A. B. the said lady the queen hath been given to understand"]; and because &c. that by honest &c. he should make known to the said C. D. that he be here at this day, to wit, on —, to show if any thing &c. why the said A. B. ought not to have execution of the damages [or if in debt, "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery, if &c. And now here at this day comes the said A. B. by P. A. his attorney, and offers himself on the fourth day against the said C. D. in the plea aforesaid; and the said C. D., although on that day solemnly demanded, comes not*; and the sheriff, to wit, S. S. sheriff of — aforesaid, now here returns, that by B. B. and T. B., honest and lawful men of his bailiwick, he has made known to the said C. D. that he be here on the day in the said writ mentioned, to show cause as by the said writ he is required, and as by the said writ the said sheriff is commanded*. And hereupon the said A. B. prays execution against the said C. D. of the damages [or if in debt, "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery, and also his costs of suit, to be adjudged to him &c. Therefore it is considered that the said A. B. have execution against the said C. D. of the damages [or if in debt, "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery, by the

(a) If an alias scire facias was issued and returned nihil then here say "and the said C. D. came not: Therefore, as before, it was commanded to the said sheriff, that by honest and lawful men of his bailiwick, he should make known to the said C. D. that he should be before our said lady the queen [or in Exchequer, "before the barons of our said lady the queen of Exchequer"] at Westminster, on — (the return of alias), to show in form aforesaid, if &c. and further &c.; the same day was given to the said A. B. there &c.: At which day, before our said

lady the queen at Westminster comes [or in Exchequer, "At which day comes here"] the said A. B. in his proper person; and the said sheriff of —, as before, returns that the said C. D. hath nothing in his bailiwick where or by which he can make known to him as by the said last-mentioned writ he is commanded, nor is he found in the same; and the said C. D., although on that day solemnly called, comes not, but makes default: Therefore it is considered [&c. conclude as in the above form.] See 2 Chit. Ar. Pr. 833, 834.

default of the said *C. D.* &c. It is also considered by the justices here, that the said *A. B.* do recover against the said *C. D.* £—— for his costs and charges by him about his suit in this behalf by the said justices here adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided (a).

[*If nihil was returned, then, instead of the entry of the return of scire feci as above, between the asterisks**, enter a return of nihil, thus:*] “And the sheriff, to wit, S. S. sheriff of —— aforesaid, now here returns that the said *C. D.* hath nothing in his bailiwick where or by which he can make known to him as by the said writ he is commanded, nor is the said *C. D.* found in the same”] (b).

[*Sec 2 Chit. Ar. Pr. 834.*]

28. *Fieri Facias on Judgment by Default in Q. B. or C. P.*

[*Proceed as in the fi. fa. upon the original judgment, and see the forms, ante, 148, to the words*] whereof the said *C. D.* is convicted, as appears to us of record, [*or in C. P. omit the words “as appears to us of record.”*] And whereupon it is considered in our same court, that the said *A. B.* have his execution against the said *C. D.* of the damages [*or in debt, “debt and damages”*] aforesaid, according to the force, form and effect of the said recovery, as also appears to us of record, [*or if in C. P. omit the words “as appears to us of record,”*] together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of —— A. D. ——, on which day the first mentioned judgment was entered up [*or if entered up before 1st October, 1838, say “from the 1st day of October, A. D. 1838,” and omit the words “on which day the first-mentioned judgment was entered up,”*] and also £—— which in our same court were adjudged to the said *A. B.* for his costs and charges which he hath been put unto on occasion of our writ of scire facias, sued out against the said *C. D.* at the suit of the said *A. B.* in that behalf, whereof the said *C. D.* is convicted, as also appears to us of record, [*or in C. P. omit the words “as also appears to us of record,”*] together with interest upon the said sum of £—— (*the costs of sci. fa.*), at the rate of £4 per centum per annum, from the —— day of —— A. D. ——, on which day the last-mentioned judgment was entered up [*or if entered up before 1st Oct. 1838, vide supra*], and have the said monies, together with such interest as aforesaid, before us [*or in C. P. “before our justices”*] at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.* for his damages [*or “debt and damages”*], costs and charges and interest aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall

(a) 3 & 4 Will. 4, c. 42, s. 34.

(b) *If a second scire facias was issued and returned nihil, here add, “Therefore, as before, the said sheriff is commanded, that by honest &c. he make known to the said C. D. that he be here at this day, to wit, on ——, to show in form aforesaid, if &c. At which day comes here the said A. B. by his said attorney, and offers himself on the fourth day against the said C. D. in the plea aforesaid; and the*

said *C. D.*, although on that day solemnly demanded, comes not; and the said sheriff, as before, now here returns that the said *C. D.* hath nothing in his bailiwick where or by which he can make known to him as by the said last-mentioned writ he is commanded, nor is the said *C. D.* found in the same: And hereupon the said *A. B.* prays execution [*&c. conclude as in the above form.*]

have executed this our writ make appear to us [or in C. P. "to our justices"] at Westminster, immediately after the execution thereof, and have there then [or in C. P. omit the word "then"] this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 837.]

29. *The like, in Exchequer.*

[Proceed as in the *fi. fa.* upon the original judgment, see the form, ante, 149, No. 2, to the words] whereof the said C. D. is convicted, as by inspecting the rolls of our said Exchequer appears to us. And whereupon it is considered in our same court, that the said A. B. have his execution against the said C. D. of the damages [or "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery, as also appears to us by inspecting the rolls of our said Exchequer, together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the — day of — A. D. —, on which day the first-mentioned judgment was entered up [or if entered up before 1st October, 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the first-mentioned judgment was entered up"]. And also £—— which in our same court were adjudged to the said A. B. for his costs and charges which he hath been put unto on occasion of our writ of *scire facias* sued out against the said C. D. at the suit of the said A. B. in that behalf, whereof the said C. D. is convicted, as also appears to us by inspecting the rolls of our said Exchequer, together with interest upon the said sum of £—— (the costs of *sci. fa.*), at the rate of £4 per centum per annum, from the — day of — A. D. —, on which day the last-mentioned judgment was entered up [or if entered up before 1st October, 1838, *vide supra*]; and have the said monies, together with such interest as aforesaid, before the barons of our Exchequer at Westminster, immediately after the execution hereof, to be then and there paid to the said A. B. or his attorney, in this behalf, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to the said barons at Westminster, immediately after the execution thereof, and have you there this writ. Witness — (name of chief baron), at Westminster, the — day of —, in the year of our Lord —.

30. *Capias ad Satisfaciendum, for Plaintiff, on Judgment by Default in Q. B. or C. P.*

[Proceed as in the *ca. sa.* upon the original judgment, see the form, ante, 190, No. 1, to the words] whereof the said C. D. is convicted, as appears to us of record [or in C. P. omit the words "as appears to us of record"]: And whereupon it is considered in our same court, that the said A. B. have his execution against the said C. D. of the damages [or in debt, "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery, as also appears to us of record, [or in C. P. omit the words, "as appears to us of record,"] together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the — day of — A. D. —, on which day the first-mentioned judgment was entered up, [or if entered up before 1st October, 1838, say "from the 1st

day of October, A. D. 1838, and omit the words "on which day the first-mentioned judgment was entered up,"] and also to satisfy [&c. conclude as in the form, ante, 287, No. 43].

31. *The like, in Exchequer.*

[A form may be readily framed from the preceding form, and the ca. sa. ante, 191, No. 2.]

32. *Testatum Writs of Fi. fa. or Ca. sa.*

[A form may be readily framed from the above forms of fi. fa. and ca. sa. and the testatum writs, ante, 284, No. 40 ; 287, No. 46.]

33. *Note of Appearance.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

I appear for the defendant, upon the writ of scire facias [or "alias scire facias"] issued in this cause. Dated the — day of —, 1840.

Your's &c.

To Mr. A. P. plaintiff's attorney.

D. A. defendant's attorney.

[See 2 Chit. Ar. Pr. 835.]

34. *Declaration in Scire facias in Q. B. or Exch., to revive a judgment upon a Scire feci returned.*

In the Q. B. [or "Exch. of Pleas."]

On the — day of —, A. D. —.

— (to wit.) Our lady the queen sent to her sheriff of — her writ close in these words, that is to say, Victoria [&c. copy the scire facias, and proceed as ante, 465, No. 26, to the end of sheriff's return, and conclude thus:] and the said C. D. being solemnly demanded, comes by D. A. his attorney: And hereupon the said A. B. prays that execution may be adjudged to him against the said C. D. of the damages [or in debt, "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery &c.

35. *The like, on Nihil returned.*

In the Q. B. [or "Exch. of Pleas."]

On the — day of —, A. D. —.

— (to wit.) Our lady the queen sent to her sheriff of — her writ close in these words, that is to say, Victoria [&c. copy the scire facias, and proceed as ante, 465, No. 26, to the end of the return of nihil, (or if there have been two scire faciases and two returns of nihil, copy the first scire facias, and proceed as ante, 465, No. 26, n., to the end of second return of nihil,) and conclude thus:] And the said C. D. being solemnly demanded, comes by D. A. his attorney: And hereupon the said A. B. prays that execution may be adjudged to him against the said C. D. of the damages [or in debt, "debt and damages"] aforesaid, according to the force, form, and effect of the said recovery &c.

[See 2 Chit. Ar. Pr. 835.]

36. *The like, upon the Return of Scire feci, in C. P.*

In the Common Pleas.

On the — day of —, A. D. —.

— (to wit.) The sheriff was commanded [&c. *copy the whole of the scire facias, add proceed us ante, 465, No. 27, to the end of the sheriff's return, and conclude thus:*] and the said C. D. at that day, being solemnly demanded, comes by D. A. his attorney: And hereupon the said A. B. prays that execution may be adjudged to him against the said C. D. of the damages [*or if in debt, "debt and damages"*] aforesaid, according to the force, form, and effect of the said recovery &c.

37. *The like, upon Nihil returned.*

In the Common Pleas.

On the — day of —, A. D. —.

— (to wit.) The sheriff was commanded [&c. *copy the whole of the scire facias, and proceed us ante, 465, No. 27, to the end of the return of nihil, (or if there have been two scire facias and two returns of nihil, copy the first scire facias, and proceed as ante, 464, 465, No. 26, n. to the end of the second return of nihil,) and conclude thus:*] And the said C. D. at that day, being solemnly demanded, comes by D. A. his attorney: And hereupon the said A. B. prays that execution may be adjudged to him of the damages [*or if in debt, "debt and damages"*] aforesaid, according to the force, form, and effect of the said recovery &c.

38. *The like, in Q. B. against three Defendants, where one appears and the other makes default (a).*

In the Queen's Bench.

On the — day of —, A. D. —.

— (to wit) Our lady the queen sent to her sheriff of — her writ close in these words, that is to say: Victoria [&c. *copy the whole of the scire facias, and proceed thus:*] At which day, before our said lady the queen at Westminster, comes the said A. B. in his proper person; and the sheriff to wit, S. S. sheriff of — aforesaid, now here returns [&c. *as ante, 464, No. 26*], and the said C. D., E. F., and G. H., being solemnly demanded, the said C. D. comes in his proper person; but the said E. F. and G. H. do not, nor does either of them come, but make default: And hereupon the said A. B. prays that execution may be adjudged to him for the damages [*or if in debt, "debt and damages"*] aforesaid, according to the force, form, and effect of the said recovery &c. But because it is convenient that there should be but one award of execution in this behalf, therefore let all further proceedings against the said E. F. and G. H. be stayed, until it shall be determined whether execution ought to be awarded against the said C. D. &c.

[See 2 Chit. Ar. Pr. 835.]

(a) It seems the plaintiff cannot declare in this case until he has obtained leave to sign judgment by

default against those who have not appeared.

39. *Declaration in Scire facias in Ejectment in C. P. against Terre-tenants, of a term subsequent to return of Writ ; with suggestion of death of Defendant, puis darrein continuance.*

[See the form, *Tidd's Forms*, 615.]

40. *Declaration in Q. B. in Scire facias issued into a County Palatine upon one Nihil returned.*

In the Queen's Bench.

On the — day of —, A. D. —.

— (to wit.) Our lady the queen sent to her chancellor of her county palatine of Lancaster [or “Durham”(a)] her writ close in these words, that is to say: *Victoria* [&c. copy the whole of the *scire facias* and proceed thus]: At which day, before our said lady the queen at Westminster, came the said *A. B.* in his proper person; and the chancellor, to wit, the right honourable —, chancellor of the said county palatine, returned to our said lady the queen, that by virtue of the said writ to him directed and delivered by another writ under the seal of the said county palatine duly made, and directed to the sheriff of the said county, the said chancellor had commanded the said sheriff, as he was by the said first-mentioned writ commanded; which said sheriff, to wit, *S. S.* in answer to the said writ to him directed, said, that the said *C. D.* had nothing in his bailiwick where or by which he could give him notice, as by the said last-mentioned writ he was commanded, nor was the said *C. D.* found in the same: [If you have proceeded by two *scire faciases*, you should here state the issuing of the *alias* and return of *nihil*; but the issuing of two *scire faciases* is now rarely the case]; and the said *C. D.* being solemnly demanded, comes not. And hereupon the said *A. B.* prays that execution may be adjudged to him of the damages [or if in debt, “debt and damages”] aforesaid, according to the force, form, and effect of the said recovery &c.

41. *Notice to plead.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

A. B. plaintiff v. *C. D.* defendant.

The defendant is to plead hereto in four days, [or “in eight days,” or “within the first four days of next — term,”] otherwise judgment.

[See 2 *Chit. Ar. Pr.* 835.]

42. *Memorandum for Rule to plead.—Demand of Plea.*

[See the forms, ante, 38, 39. See 2 *Chit. Ar. Pr.* 804.]

43. *Entry on Roll in Q. B. of Judgment by Default for want of Plea.*

On the — (teste of the *scire facias*), in the — year of the reign of Queen Victoria.

Witness (name of chief justice).

— (to wit.) Our lady the queen sent to her sheriff of Middlesex her writ close [&c. copy the declaration, see ante, 469, No. 34, to the end; and then proceed in a fresh line, thus]: And the said *C. D.* in his proper person comes and says nothing in bar or preclusion of the said *A. B.*

(a) See as to Durham, ante, 21, n. (b).

having execution of the damages [*or if in debt, "debt and damages"*] aforesaid adjudged to him, according to the force, form and effect of the said recovery, whereby the said *A. B.* remains therein undefended against the said *C. D.* Therefore it is considered that [*&c. conclude as in the entry, ante, 465, No. 26.*]

44. *The like, in C. P.*

In the Common Pleas.

On the — day of — (*teste of the scire facias*), in the — year of the reign of Queen Victoria.

— (to wit.) The sheriff of — was commanded, whereas [*&c. proceed in copying declaration &c. as directed in the preceding form.*]

45. *The like, in Exchequer.*

Pleas before the barons of the Exchequer at Westminster, on the — day of —, in the year of our Lord 1840.

— (to wit.) Our lady the queen sent to the sheriff of — her writ close in these words [*&c. proceed in copying the declaration &c. as directed in the form, ante, 471, No. 43.*]

46. *Execution on a Judgment by Default for want of a Plea.*

[*Same as the forms, ante, 449.*]

47. *Plea to Declaration in Scire Facias to revive a Judgment.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

On the — day of —, A. D. —.

D. } And the said *C. D.* says that the said *A. B.* ought not to have
ats. } his execution against the said *C. D.* for the damages [*or if in debt,*
B. } "*debt and damages*"] aforesaid, because he says that [*here state the*
subject-matter of defence. In the form from which this was prepared, it was
a plea of payment, and was as follows: "the said *C. D.* after the recovery
of the judgment aforesaid in the writ of scire facias above mentioned,
and before the issuing of the said writ, to wit, on &c., paid to the said
A. B. the said sum of £ —, in full satisfaction and discharge of the
judgment aforesaid in the said writ of scire facias above mentioned, which
said sum of £ — the said *A. B.* then and there accepted and received
in full satisfaction and discharge of the said judgment"], and this the said
C. D. is ready to verify, wherefore he prays judgment if the said *A. B.*
ought to have his execution against him for the damages [*or in debt,*
"*debt and damages*"] aforesaid.

[*See 2 Chit. Ar. Pr. 835, 836.*]

48. *Replication thereto.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

On the — day of —, A. D. —.

D. } And the said *A. B.* as to the said plea of the said *C. D.* by
v. } him above pleaded says, that he, by reason of any thing therein
B. } alleged, ought not to be barred from having his execution of the
damages [*or in debt, "debt and damages"*] aforesaid against him, because

he says that [the said C. D. did not pay to the said A. B. the said sum of £—— in manner and form as the said C. D. hath above in his plea alleged], and this the said A. B. prays may be inquired of by the country &c.

49. *Issue in Scire Facias.*

[See the form, ante, 283. *Imparlances* may be requisite, and see the form in *ejectment*, ante, 379.]

50. *Notice of Trial.*

[Same as usual; see the forms, ante, 50 to 52.]

51. *Nisi Prius Record.*

[See the forms, ante, 66, 283; but between the first and second placita insert the form of the issue and award of venire &c. from the statement of the venue in the margin to the end.]

52. *Jury Process.*

[See the forms, ante, 68, 69, &c.; but instead of the words "in an action on the case &c." say "on an issue in scire facias in debt."]

53. *Postea.*

[Same as ante, 454, No. 36.]

54. *Judgment for Plaintiff after Verdict.*

[See the forms in *Q. B.* against bail, ante, 283, No. 37; but instead of the word "recognizance," say "recovery."]

55. *Docket Paper of Judgment after Verdict in Q. B.*

The entry [or "further entry"] of P. A. gentleman, one &c.
on the —— day of ——, A. D. ——.

—— (*Venue.*) Judgment in scire facias to revive, on verdict, } *Roll*
between A. B. plaintiff and C. D. defendant. } ——

56. *Execution for Plaintiff on Judgment after Verdict.*

[*Writs of Execution* may readily be framed from the forms, ante, 148 to 203, and 467, 468.]

57. *Postea, Judgment and Execution for Defendant.*

[The same as in ordinary cases; see the forms, ante, 97, 108, 201.]

SECTION II.

SCIRE FACIAS UPON THE DEATH OF PARTIES AFTER FINAL JUDGMENT
AND BEFORE EXECUTION.1. *Præcipe for the Writ.*

—— (to wit.) Scire facias for execution for *E. E.* executor [or “administrator”] of *A. B.* deceased, against *C. D.* executor [or “administrator,” or “heir and terretenants”] of *G. G.* deceased [or as the case may be], for £—— debt and £—— damages. Returnable on ——.

P. A. attorney.

——, 1840.

2. *Scire Facias in Q. B. for an Executor or Administrator on Death of sole Plaintiff, after Final Judgment and before Execution.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting: Whereas *A. B.* lately in our court before us at Westminster, by the judgment of the same court, recovered [&c. proceed as in the forms, ante, 458 to 462, to the words] whereof the said *C. D.* is convicted, as appears to us of record: and afterwards, and before execution thereupon made, to wit, on ——, the said *A. B.* died, having first duly made and published his last will and testament, and thereby constituted and appointed *E. E.* executor thereof: after whose death the said *E. E.* duly proved the said last will and testament of the said *A. B.*, and took upon himself the burthen of the execution of the same; [or if the plaintiff died intestate, say “died intestate; after whose death, to wit, on ——, administration of all and singular the goods, chattels and credits which were of the said *A. B.* at the time of his death by ——, by divine providence archbishop of Canterbury (according to the fact), in due form of law was granted to *E. E.*”] as by the information of the said *E. E.* in our said court we have been given to understand; and now, on behalf of the said *E. E.* executor [or “administrator”] as aforesaid, in our said court before us, we have been informed, that although judgment be thereupon given, yet execution of the damages [or in debt, “debt and damages”] aforesaid still remains to be made to him; wherefore the said *E. E.* hath humbly besought us to provide him, as such executor [or “administrator”] as aforesaid, a proper remedy in this behalf*: And we being willing that what is just in this behalf should be done, command you that by honest and lawful men of your bailiwick you make known to the said *C. D.* that he be before us at Westminster on ——, to show if he has or knows of any thing to say for himself why the said *E. E.* executor [or “administrator”] as aforesaid, ought not to have execution against him of the damages [or in debt, “debt and damages”] aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient for him so to do, and further to do and receive what our said court before us shall then and there consider of him in this behalf, and have you there the names of those by whom you shall so make known to him, and this writ. Witness —— (name of chief justice), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 Chit. Ar. Pr. 819.]

3. *The like, in C. P.*

Victoria, [&c. *as ante*, 474, No. 2,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court before Sir (*name of chief justice*), knight, and his companions, then our justices of the Bench at Westminster, by the consideration and judgment of the same court, recovered against *C. D.* [&c. *proceed as in the forms, ante*, 458 to 462, to the words] whereof the said *C. D.* is convicted, as by the record and proceedings thereof remaining in our said court before our justices at Westminster aforesaid manifestly appears; yet execution of the said judgment still remains to be made: And afterwards, to wit, on —, the said *A. B.* died [&c. *proceed as in the preceding form to the*, and then thus:*] And because we are willing that those things which in our same court are rightly done should be duly carried into execution, and that what is just in this behalf should be done, command you that by honest and lawful men of your bailiwick you make known to the said *C. D.* that he be before our justices at Westminster on —, to show if he has or knows of any thing to say for himself why the said *E. E.* executor [*or “administrator”*] as aforesaid, ought not to have execution against him of the damages [*or in debt, “debt and damages”*] aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient for him so to do, and further to do and receive what our said justices shall then and there consider of him in this behalf; and have you there the names of those by whom you shall make known to him, and this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

4. *The like, in Exchequer.*

Victoria, [&c. *as ante*, 474, No. 2,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court before the barons of our Exchequer at Westminster, by the consideration and judgment of the same court, recovered against *C. D.* [&c. *proceed as in the forms, ante*, 458 to 460, to the words] whereof the said *C. D.* is convicted, as by inspecting the rolls of our said Exchequer appears to us: And although the said judgment be rendered, yet execution thereof still remains to be made; and afterwards, to wit, on —, at —, the said *A. B.* died [&c. *proceed as in the form, ante*, 474, No. 2, to the*, and then thus:] And we being willing that those things which in our same court are rightly done should be duly carried into execution, and that what is just in this behalf should be done, command you, that by honest and lawful men of your bailiwick you make known to the said *C. D.* that he be before the barons of our said Exchequer at Westminster on —, to show if he has or knows of any thing to say for himself why the said *E. E.* executor [*or “administrator”*] as aforesaid, ought not to have execution against him of the damages [*or in debt, “debt and damages”*] aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient for him so to do, and in what manner you shall execute this our writ make appear to the barons of our said Exchequer at Westminster, on —; and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (*name of chief baron*), at Westminster, the — day of —, in the year of our Lord —.

5. *Scire facias in Q. B. against an Executor or Administrator, on Death of sole Defendant, after final Judgment and before Execution.*

Victoria, [&c. *as ante*, 474, No. 2,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court before us at Westminster, by the judgment of the same court, recovered [&c. *proceed as in the forms, ante*, 458 to 460, *to the words*] whereof the said *C. D.* is convicted, as appears to us of record: And afterwards and before the execution thereupon made, to wit, on —, the said *C. D.* died, having first duly made and published his last will and testament, and thereby constituted and appointed *E. E.* executor thereof, after whose death the said *E. E.* took upon himself the burthen of the execution of the said last will and testament [*or if defendant died intestate, say* “died intestate, after whose death, to wit, on —, administration of all and singular the goods, chattels and credits which were of the said *C. D.* at the time of his death by —, by divine providence archbishop of Canterbury (*according to the fact*), in due form of law was granted to *E. E.*”], as by the information of the said *A. B.* in our said court before us we have been given to understand*: And now, on the behalf of the said *A. B.* in our said court before us, we have been informed, that although judgment be thereupon given, yet execution of the damages [*or in debt, “debt and damages”*] aforesaid still remains to be made to him; wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by honest and lawful men of your bailiwick you make known to the said *E. E.* executor [*or “administrator”*] as aforesaid, that he be before us at Westminster on —, to show if he has or knows of any thing to say for himself why the said *A. B.* ought not to have his execution against him of the damages [*or in debt, “debt and damages”*] aforesaid, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death in the hands of the said *E. E.* as executor [*or “administrator”*] as aforesaid, to be administered according to the force, form and effect of the said recovery, if it shall seem expedient for him; and further to do and receive what our said court before us shall consider of him in this behalf; and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 819.]

6. *The like, in C. P.*

Victoria, [&c. *as ante*, 474, No. 2,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court, to wit, in — term, in the — year of our reign, before — (*name of chief justice*), knight, and his companions, then our justices of the Bench at Westminster, by the consideration and judgment of the same court, recovered against *C. D.* [&c. *proceed as in the forms, ante*, 458 to 460, *to the words*] whereof the said *C. D.* is convicted, as by the record and proceedings thereof remaining in our said court before our justices at Westminster aforesaid manifestly appears; yet execution of the said judgment still remains to be made: And afterwards, to wit, on —, the said *C. D.* died [&c. *proceed as in the preceding form to the*, and then thus:*] And because we are willing that those things which in our same court are rightly done should be duly carried into execution, and that what is just in this behalf should be done, command you that by honest and lawful men of your bailiwick you make known to the

said *E. E.* executor [or "administrator"] as aforesaid, that he be before our justices at Westminster on —, to show if he has or knows of any thing to say for himself why the said *A. B.* ought not to have his execution against him of the damages [or in debt, "debt and damages"] aforesaid, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death in the hands of the said *E. E.* as executor [or "administrator"] as aforesaid, to be administered according to the force, form and effect of the said recovery, if it shall seem expedient for him so to do, and further to do and receive what our said justices shall then and there consider of him in this behalf; and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in year of our Lord —.

7. The like, in Exchequer.

Victoria, [&c. as ante, 474, No. 2,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court before the barons of our Exchequer at Westminster, by the consideration and judgment of the same court, recovered against *C. D.* [&c. proceed as in the forms, ante, 458 to 460, to the words] whereof the said *C. D.* is convicted, as by inspecting the rolls of our said Exchequer appears to us: And although the said judgment be rendered, yet execution thereof still remains to be made: And afterwards the said *C. D.* died [&c. proceed as in the form, ante, 476, No. 5, to the *, and then thus]: And we being willing that those things which in our same court are rightly done, should be duly carried into execution, and that what is just in this behalf should be done, command you, that by honest and lawful men of your bailiwick you make known to the said *E. E.* executor [or "administrator"] as aforesaid, that he be before the barons of our said Exchequer at Westminster on —, to show if he has or knows of any thing to say for himself why the said *A. B.* ought not to have his execution against him of the damages [or in debt, "debt and damages"] aforesaid, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death in the hands of the said *E. E.* as executor [or "administrator"] as aforesaid, to be administered according to the force, form, and effect of the said recovery, if it shall seem expedient for him so to do, and in what manner you shall execute this our writ make appear to the barons of our said Exchequer at Westminster on —; and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (*name of chief baron*), at Westminster, the — day of —, in the — year of our Lord —.

8. Scire Facias for Plaintiff, against the Heir and Tertenants on the Death of a sole Defendant, after final Judgment and before Execution.

Victoria, [&c. as ante, 474, No. 2,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court [&c. proceed as in the forms, ante, 458 to 460, to the words] still remains to be made to him; and after the giving of the said judgment the said *C. D.* died, leaving *H. D.* his son and heir at law, him surviving, as we have been informed and given to understand. Wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf; and we, being willing that what is just in this behalf should be done [or in *C. P.* or *Erch.* "that those things which in our said court are rightly done, should be duly carried into execution, and that what is just in this behalf should be done,"]

command you, that by honest and lawful men of your bailiwick you make known to the said *H. D.* as such heir of the said *C. D.* as aforesaid, and also to the tenants of all and singular the lands and tenements of which the said *C. D.* on —, (on which day judgment aforesaid was obtained) or at any time after was seised, to him and his heirs, that they be before us at Westminster on —, [or in *C. P.* “before our justices at Westminster, on —,” or in *Exch.* “before the barons of our Exchequer at Westminster on —,”] to show if they have or know, or if any of them hath or knoweth of any thing to say for themselves or himself, why the damages [or in *debt*, “debt and damages aforesaid”] ought not to be made of the said lands and tenements, and rendered to the said *A. B.* according the force, form, and effect of the said recovery, if it shall seem expedient for the said *A. B.* so to do; and further to do and receive what our said court before us [or in *C. P.* “our said justices at Westminster, on —”] shall consider of them and every of them in this behalf, [or in *Exch.* instead of this last sentence, “and further &c.” say “and in what manner you shall execute this our writ make appear to the barons of our said Exchequer at Westminster, on —”]; and have you there the names of those by whom you shall make known to them, and this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.
[See 2 *Chit. Ar. Pr.* 821.]

9. *The like, against Tertenants after a Return of Nihil as to the Heir.*

Victoria, [&c. as ante, 474, No. 2,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court before us [&c. proceed as in the forms, ante, 458 to 460, to the words] still remains to be made to him; and after the finding of the said judgment the said *C. D.* died, as we have been informed and given to understand; wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done [or if in *C. P.* or *Exch.* then as directed in preceding form], command you, that by honest and lawful men of your bailiwick you make known to the tenants of all the lands and tenements in your bailiwick, of which the said *C. D.* or any person or persons in trust for him was or were seised in fee simple, on —, (on which day the judgment aforesaid was obtained,) or at any time after, that they be before us [or in *C. P.* “before our justices,” or in *Exch.* “before our barons”] at Westminster, on —, to show if they have or know of any thing to say for themselves why the damages [or in *debt*, “debt and damages”] aforesaid ought not to be made of those lands and tenements, and rendered to the said *A. B.* according to the force, form, and effect of the said recovery, if it shall seem expedient for him; and further to do and receive [&c. conclude as in preceding form.]

10. *Scire Facias against the Heir and Tertenants of a deceased Defendant, on a Judgment against the Deceased and his Heir Presumptive (a).*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas *A. D.* lately in our court before us at Westminster, by the

(a) See the form where there are several defendants in ordinary cases, *post*, 492.

judgment of the same court recovered against *W. W.* and *R. W.* a certain debt of £ —, and also £ — for his damages which he had sustained, as well on occasion of the detaining the said debt as for his costs and charges by him about his suit in that behalf expended, whereof the said *W. W.* and *R. W.* are convicted, as by the record and proceedings thereof still remaining in our court before us at Westminster manifestly appears: And now on behalf of the said *A. D.* in our same court we are informed, that although judgment be thereupon given, yet execution of the debt and damages aforesaid still remains to be made to him; and we are also informed, on behalf of the said *A. D.*, that the said *R. W.* is lately dead, leaving the said *W. W.*, his son and heir at law, him surviving, wherefore the said *A. D.* hath humbly besought us to provide him a proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by honest and lawful men of your bailiwick, you make known to the said *W. W.*, and also to the tenants of all and singular the lands and tenements of which the said *R. W.* on the — day of —, in the year of our Lord 1840, (on which day the judgment aforesaid was obtained,) or at any time afterwards, was seised to him and his heirs, that they be before us at Westminster, on the — day of —, in the year of our Lord 1840, to show if they have or know, or any of them hath or knoweth of any thing to say for themselves or himself, why the debt and damages aforesaid ought not to be made and rendered to the said *A. D.*, and execution thereof to him had, according to the force, form, and effect of the said recovery, if it shall seem expedient for the said *A. D.* so to do, and further to do and receive what our said court before us shall consider of them, and every of them, in this behalf; and have you there the names of those by whom you shall make known to them, and this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

Ellenborough.

11. *Summons on the Writ.*

[Same as form, ante, 462, No. 17, stating, however, that plaintiff or defendant is "executor," or "administrator," or "heir &c." as the case may be.]

12. *Return of Scire feci, or Nihil.*

[See forms, ante, 463.]

13. *Return of Nihil to Scire facias against the Heir and Tertenants.*

I do hereby certify, that there is no heir, nor are there any tenants, nor is there any tenant, of any lands or tenements in my bailiwick, whereof the within-named *C. D.* on the day of giving the within-mentioned judgment, or ever afterwards, was seised in fee simple, to whom I can make known, as by the said writ I am commanded.

The answer of S. S. sheriff.

[See 2 Chit. Ar. Pr. 820, 821, 835.]

14. *Return of Nihil as to the Heir, and Scire feci to the Tertenants of one Defendant; and Nihil as to the Heir and the Tertenants of another.*

The execution of this writ appears in the schedule hereunto annexed.
The answer of S. S. sheriff.

H. H. in the annexed writ named, hath nothing in my bailiwick where or by which I can make known to him, as by the said writ I am commanded, nor is the said H. H. found in the same: And I have, by B. B. and T. B., good and lawful men of my bailiwick, given notice to T. T. tenant of two messuages [&c. *describe them*], with the appurtenances, in the parish of —, in my bailiwick, also to S. F. tenant of two acres of land [&c. *describe the lands*], with the appurtenances, in the said parish of —, in my bailiwick, which were the messuages, lands, and tenements of the said C. D. in the said writ named, in his life-time, on the day of giving the judgment in the said writ mentioned, of which the said C. D. then and after was seised in fee simple, to be before the lady the queen, at the day and place in the said writ contained, to show in manner therein mentioned: And I do hereby further certify, that there are no tenants, nor is there any tenant, of any other lands or tenements in my bailiwick, whereof the said C. D. on the day of giving the said judgment, or ever afterwards, was seised in fee simple, to whom I can make known, as by the said writ I am also commanded: And I do hereby also certify, that there is no heir, nor are there any tenants, nor is there any tenant, of any lands or tenements in my bailiwick, whereof G. G. in the annexed writ named, on the day of giving the said judgment, or ever afterwards, was seised in fee simple, to whom I can make known, as by the said writ I am also commanded.

S. S. sheriff.

15. *Memorandum for Rule to appear.*

[*See the form, ante, 277, No. 17.*]

16. *Præcipe for Rule for Judgment, and Rule.*

[*See the forms, ante, 279, No. 19, 20.*]

17. *Affidavit for leave to sign Judgment on one Scire facias returned Nihil, and Judge's fiat.*

[*See the forms, ante, 464, 278.*]

18. *Entry on Roll of Judgment by default for want of Appearance.*

[*Proceed as in the form, ante, 465, 466, respectively, according to the court in which the sci. fa. is, to the words*] Therefore it is considered that the said A. B. [or "E. E. as executor," or "administrator"], as aforesaid, have his execution against the said C. D. of his damages [or if in debt, "debt and damages aforesaid"], according to the force, form, and effect of the said recovery, by the default of the said C. D. &c. [or if against an executor &c. then "Therefore it is considered that the said A. B. have his execution against the said E. E. as such executor (or 'administrator') as aforesaid, of the damages (or in debt, 'debt and damages') aforesaid, to be levied in form aforesaid, according to the force,

form, and effect of the said recovery, by the default of the said *E. E. &c.*"] It is also considered [*&c. conclude, stating the judgment as to the costs as in the forms, ante, 465, 466, Nos. 26, 27.*]

[*See 2 Chit. Ar. Pr. 833.*]

19. *Entry on Roll of Judgment by default in Q. B. on a Sci. fa. against the Heir and Tertenants of a deceased Defendant, on a Judgment against the deceased and his Heir Presumptive (a).*

In the Queen's Bench.

On the — day of —, A. D. —.

— (to wit.) Our lady the Queen sent to her sheriff of *G.* her writ close in these words, that is to say: *Victoria* [*&c. copy the sci. fa. to the teste inclusive, and then proceed thus:*] At which day before our lady the queen at Westminster, comes the said *A. D.* in his proper person. And the sheriff, to wit, *H. G.*, esq. sheriff of *G.* aforesaid, now here returns that the within-named *W. W.* is not, nor are there any tenants, nor is there any tenant, of any lands or tenements in his bailiwick, whereof the within-named *R. W.*, on the day of giving the within-mentioned judgment, or ever afterwards, was seised to him and his heirs, to whom he can make known, as by the said writ he is commanded. And the said *W. W.*, although on that day solemnly demanded, comes not, but makes default. Therefore it is considered that the said *A. D.* have his execution against the said *W. W.* of the debt and damages aforesaid, to be levied of the lands and tenements of which the said *R. W.* on the day of giving the judgment in the said writ mentioned, and afterwards, was seised to him and his heirs, according to the force, form, and effect of the said recovery, by the default of the said *W. W. &c.* It is also considered by the court here, that the said *A. D.* do recover against the said *W. W.* £ — for his costs and charges by him about his suit in this behalf expended, by the said court now here adjudged to the said *A. D.*, and with his assent, according to the form of the statute in such case made and provided, to be also levied of the lands and tenements of which the said *R. W.*, on the day of giving the judgment in the said writ mentioned, and afterwards, was seised to him and his heirs.

20. *Execution for Executor or Administrator of Plaintiff on Judgment obtained by Plaintiff, since deceased.*

[*Proceed as in the fi. fa. or ca. sa, upon the original judgment, and see forms, ante, 148, 149, 190, but instead of "A. B. recovered," &c., say "A. B. lately deceased, in his life-time recovered," &c. and instead of "awarded to A. B." &c., say "awarded to A. B. in his life-time," &c. to the words*] whereof the said *C. D.* is convicted, as appears to us of record, [*or in C. P. omit the words "as appears to us of record," or in Exchequer say "as by inspecting the rolls of our said Exchequer appears to us"*]; and whereupon it is considered in our same court, that *E. E.* executor of the last will and testament of the said *A. B.* [*or "administrator of all and singular the goods, chattels, and credits which were of the said A. B. at the time of his death, who died intestate,"*] have execution against the said *C. D.* of the [*debt and*] damages aforesaid, according to the force, form, and effect of the said recovery; as also appears to us of

(a) See the form of *sci. fa.* ante, 478.

record, [or if in *C. P.* or *Exch.* see *supra*,] and also £—— which [&c. conclude as in the forms, ante, 467, 468, Nos. 28, 29, 30, but in the *fi. fa.* say “to be rendered unto the said *E. E.* as such executor (or ‘administrator’) for the damages (or ‘debt and damages’), costs and charges aforesaid.”]

[See 2 *Chit. Ar. Pr.* 819, 820.]

21. *Fi. fa. against Executor or Administrator of Defendant, deceased, on a Judgment obtained against Defendant.*

Victoria, [&c. as ante, 474, No. 2,] to the sheriff of ——, greeting : We command that you cause to be made of the goods and chattels in your bailiwick, which were of *C. D.* at the time of his death, in the hands of *E. E.* executor of the last will and testament of the said *C. D.* [or “administrator of all and singular the goods, chattels, and credits which were of the said *C. D.* at the time of his death, who died intestate,”] to be administered £——, which *A. B.* hath recovered against the said *C. D.* in his life-time for his damages [&c. as in forms, ante, 148, 149, or if in debt, say “as well a certain debt of £——, which *A. B.* hath recovered against the said *C. D.* in his life-time, in our court” &c. as in *fi. fa.*, ante, 148, 149, &c. to the words] whereof the said *C. D.* is convicted, as appears to us of record, [or in *C. P.* omit the words “as appears to us of record;” or in *Exch.* say “as by inspecting the rolls of our said Exchequer appears to us,”] and whereupon it is considered in our same court that the said *A. B.* have his execution against the said *E. E.* as such executor [or “administrator”] as aforesaid, of the damages [or “debt and damages”] aforesaid, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death in his hands to be administered, according to the force, form, and effect of the said recovery, as also appears to us of record, [or if in *C. P.* or *Exch.* see *supra*,] together with interest, [&c. conclude as in the forms, ante, 467, 468, Nos. 28, 29, 30.]

22. *Elegit on a Judgment by Default, in Scire Facias against the Heir and Tertenants of a deceased Defendant on a Judgment against the Deceased and his Heir Presumptive in Q. B.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting : Whereas *A. D.* lately in the court of his late majesty King William the Fourth, before him at Westminster, by the judgment of the same court, recovered against *W. W.* and *R. W.* a certain debt of £400 and also £9 : 10s. for his damages which he had sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *W. W.* and *R. W.* are convicted, as by the record and proceedings thereof still remaining in our court before us at Westminster manifestly appears. And whereas afterwards, on behalf of the said *A. D.* in our same court we were informed, that although judgment was thereupon given, yet execution of the debt and damages aforesaid remained to be made to him. And whereas, on behalf of the said *A. D.* in our same court, we were also then informed that the said *R. W.* had died, leaving the said *W. W.*, his son and heir-at-law, him surviving : wherefore the said *A. D.* humbly besought us to provide him a proper remedy in that behalf, and we being willing that what was just in that behalf should be done, commanded our late sheriff of ——, that by honest and lawful men of his said bailiwick he should

make known to the said *W. W.*, and also to the tenants of all and singular the lands and tenements of which the said *R. W.* on the — day of —, in the year of our Lord —, (on which day the judgment aforesaid was obtained,) or at any time afterwards, was seised to him and his heirs, that they should be before us at Westminster on the — day of —, A. D. —, to show if they had or knew, or if any of them had or knew of any thing to say for themselves or himself, why the debt and damages aforesaid ought not to be made and rendered to the said *A. D.*, and execution thereof to him had, according to the force, form, and effect of the said recovery, if it should seem expedient to the said *A. D.* so to do, and further to do and receive what our said court before us should consider of them and every of them in that behalf. And that the said sheriff should have there the names of those by whom he should make known to them and that writ. And our said late sheriff of — at that day certified and returned to us at Westminster aforesaid, that the said *W. W.* was not, nor were there any tenants, nor was there any tenant of any lands or tenements in his bailiwick, whereof the said *R. W.* on the day of the giving of the said judgment, or ever afterwards, was seised to him and his heirs, to whom he the said sheriff could make known as by the said writ the said sheriff was commanded, and such proceedings were thereupon had in our said court, that it was afterwards considered by our said court, that the said *A. D.* should have his execution against the said *W. W.* of the debt and damages aforesaid, to be levied of the lands and tenements of which the said *R. W.* on the day of giving the said judgment against him and the said *W. W.* as aforesaid, and afterwards, was seised to him and his heirs, according to the force, form, and effect of the said recovery by the default of the said *W. W.* &c.; and further that the said *A. D.* should recover against the said *W. W.* £8:10s. for his costs and charges by him about his suit in this behalf by our said court before us adjudged to the said *A. D.* and with his assent, according to the form of the statute in such case made and provided, to be also levied of the lands and tenements of which the said *R. W.* on the day of giving the said judgment against him and the said *W. W.* as aforesaid, and afterwards, was seised to him and his heirs by the said default of the said *W. W.* &c. And afterwards the said *A. D.* came into our said court before us, and, according to the form of the statutes in such case made and provided, chose to be delivered to him all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *R. W.*, or any person in trust for him, was seised or possessed of on the — day of —, in the year of our Lord — [the day on which the judgment was entered up], on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said *C. D.*, on the said — day of —, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit; to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and his assigns, according to the form of the said statutes, until the debt and damages aforesaid, together with interest upon the amount of the said debt and damages at the rate of £4 per centum per annum, from the — day of —, in the year of our Lord — [the day on which the judgment was entered up, or in case the judgment was entered up prior to the 1st of October, 1838," say "from the 1st day of October, in the year of our Lord 1838"], and the said sum of £8:10s. for the said *A. D.*'s costs and charges aforesaid, shall have been levied. Therefore we command you that without delay you cause to be deli-

vered to the said *A. D.*, by a reasonable price and extent, all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *R. W.*, or any person in trust for him, was seised or possessed of on the said — day of — [*the day on which the judgment was entered up*], or at any time afterwards, or over which the said *C. D.* on the said — day of —, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit; to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the debt and damages aforesaid, together with interest as aforesaid, and the said sum of £8:10s. for the said *A. D.*'s costs and charges aforesaid, shall have been levied: and in what manner you shall have executed this our writ make appear to us at Westminster on the — day of —, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness — (*name of chief justice*), this — day of —, A. D. 1840.

23. *Note of Appearance.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *E. E.* executor [*or "administrator"*] of *A. B.*
deceased, plaintiff,

and

E. E. executor [*or "administrator," or "heir"*]
of *C. D.* deceased, defendant.

Take notice, that I appear for the defendant upon the writ of scire facias issued in this cause. Dated the — day of —, 1840.

Your's &c.

D. A. defendant's attorney,

[*See 2 Chit. Ar. Pr. 835.*]

24. *Declaration in Scire Facias by an Executor of Plaintiff, deceased, on a Judgment obtained by Plaintiff.*

[*Proceed as directed in the forms, ante, 469, Nos. 34, 35, mutatis mutandis, to the end of the statement of defendant's appearance, and then thus:*] And hereupon the said *E. E.* as such executor as aforesaid, prays that execution of the [debt and] damages aforesaid may be adjudged to him against the said *C. D.*, according to the force, form, and effect of the said recovery, &c.; and the said *E. E.* brings into court here the letters testamentary of the said *A. B.*, whereby it fully appears to the said court [*or in C. P. "to the justices," or in Exch. "to the barons"*] here, that the said *E. E.* is executor of the last will and testament of the said *A. B.* and hath the execution thereof &c.

[*See 2 Chit. Ar. Pr. 819.*]

25. *The like, by an Administrator.*

[*Proceed as directed in the forms, ante, 469, Nos. 34, 35, mutatis mutandis, to the end of the statement of defendant's appearance, and then thus:*] And hereupon the said *E. F.* as such administrator as aforesaid (and to whom administration of all and singular the goods, chattels, and credits which were of the said *A. B.* at the time of his death, was, by —, by divine providence archbishop of Canterbury, primate of all Eng-

land and metropolitan), after the death of the said *A. B.*, to wit, on —, in due form of law granted [*let this statement agree with the grant of the administration*], prays that execution of the [debt and] damages aforesaid may be adjudged to him against the said *C. D.*, according to the force, form, and effect of the said recovery &c.; and the said *E. E.* brings into court here the letters of administration of the said archbishop [or “bishop” &c.] which give sufficient evidence to the said court here of the grant of administration to the said *E. E.*, the day whereof is a certain day and year therein mentioned, to wit, the day and year last aforesaid &c.

26. *Notice to plead—Memorandum of Rule to plead—Demand of Plea—Entry of Judgment for want of a Plea—Execution thereon—Plea—Replication—Issue—Notice of Trial—Nisi Prius Record—Jury Process—Postea—Rule for Judgment—See the forms pointed out, ante, 471, 472, 473. They are in general the same as in ordinary cases, stating however the plaintiff or defendant to be executor or administrator, as the case may be.*

27. *Plea of Payment to a Declaration in Sci. Fa. on a Judgment by Administrator.*

In the Q. B. [or “C. P.” or “Exch. of Pleas.”]

On the — day of —, A. D. —.

S. } And the said *T. S.* says that the said *S. E.* administrator of all
ata. } and singular the goods and chattels and credits which were of *S. E.*
E. } deceased, ought not to have execution against the said *T. S.* for the
damages aforesaid, because he says that the said *T. S.* after the recovery
of the judgment aforesaid in the writ of scire facias above mentioned, and
before the issuing of the said writ, to wit, on the — day of —, in the
year of our Lord —, paid to the said *S. E.*, administrator as aforesaid,
the sum of £— in full satisfaction and discharge of the judgment afore-
said in the said writ of scire facias above mentioned; which said sum of
£— the said *S. E.*, administrator as aforesaid, then and there accepted
and received in full satisfaction and discharge of the said judgment; and
this the said *T. S.* is ready to verify; wherefore he prays judgment
if the said *S. E.*, administrator as aforesaid, ought to have his execution
against him for the damages aforesaid.

28. *Replication and award of Execution in Sci. Fa. against an Executor or Administrator, (who pleaded plene administravit prater,) for Sum confessed in part, and for residue, of Assets quando acciderint (a).*

B. } And the said *A. B.*, inasmuch as he cannot deny the several
v. } matters above pleaded by the said *E. E.*, but admits the same to be
D. } true, prays judgment, and that execution may be adjudged to him
of the damages [or in debt, “debt and damages”] aforesaid, to be levied,
as to £—, part thereof, of the goods and chattels so as aforesaid ac-
knowledged to be in the hands of the said *E. E.* to be administered, and
as to the residue thereof to be levied of the goods and chattels which were
of the said *C. D.* at the time of his death, and which shall hereafter come
to the hands of the said *E. E.* as executor [or “administrator”] as afore-
said, to be administered, according to the force, form, and effect of the
said recovery: Therefore it is considered that the said *A. B.* have his

(a) See the form, Tidd's Forms, 571.

execution against the said *E. E.* of the said damages [or "debt and damages"] to be levied in form aforesaid, according to the force, form, and effect of the said recovery; and the said *E. E.* in mercy &c. [Add the usual marginal notes, as directed at the end of the form, ante, 102.]

29. Judgment for Plaintiff on *Sci. Fa.* after Verdict against an Executor or Administrator.

Therefore it is considered that the said *A. B.* have his execution against the said *E. E.* as such executor [or "administrator"] as aforesaid, of the debt [and damages] aforesaid, to be levied in form aforesaid, according to the force, form, and effect of the said recovery. And it is further considered by the court here, that the said *A. B.* do recover against the said *E. E.* £—— for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death, in the hands of the said *E. E.* as such executor, to be administered, if the said *E. E.* hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then the said £—— to be levied of the proper goods and chattels of the said *E. E.*, and the said *E. E.* in mercy &c. [Add the usual marginal notes, as directed at the end of the form, ante, 102.]

30. Judgment for Plaintiff in *Sci. Fa.* against an Executor or Administrator in *Q. B.* on demurrer to a plea (a).

[Copy to the end of the demurrer-book, and then thus: And hereupon on ——— come here the parties aforesaid, by their respective attorneys aforesaid; whereupon all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the said plea by the said *E. E.* in manner and form aforesaid above pleaded, and the matters therein contained, are not sufficient in law to bar the said *A. B.* from having execution against the said *E. E.* for the damages [or in debt, "debt and damages"] aforesaid, according to the force, form and effect of the said recovery: Therefore it is considered that the said *A. B.* have execution against the said *E. E.* for his damages [or in debt, "debt and damages"] aforesaid, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death in the hands of the said *E. E.* as executor [or "administrator"] as aforesaid to be administered, according to the force, form and effect of the said recovery &c. And it is also further considered that the said *A. B.* do recover against the said *E. E.* £—— for his costs and charges by him about his suit in this behalf expended, according to the form of the statute in such case made and provided, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death in the hands of the said *E. E.* as executor [or "administrator"] as aforesaid to be administered, if the said *E. E.* hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then the said £—— to be levied of the proper goods and chattels of the said *E. E.*: and that the said *A. B.* have also execution thereof. And the said *E. E.* in mercy &c. [Add the usual marginal notes, as directed at the end of the form, ante, 102.]

(a) See a form, Tidd's Forms, 571.

31. *Execution for Plaintiff after Verdict against an Executor or Administrator.*

[See the form, ante, 481.]

32. *Docket Papers.*

[See the form, ante, 473.]

SECTION III.

SCIRE FACIAS UPON THE DEATH OF PARTIES AFTER VERDICT AND BEFORE JUDGMENT.

1. *Præcipe for the Writ.*

[Same as ante, 474.]

2. *Scire Facias for Executor or Administrator, where Plaintiff died after Verdict, and before Judgment.*

Victoria, [&c. as ante. 458, No. 5,] to the sheriff of —, greeting: Whereas A. B. lately in our court [&c. proceed as in the form, ante, 458, No. 5, to the dagger†, and then thus:] and after the obtaining of the verdict upon which the said judgment was so given as aforesaid, and within two terms before the entry of the said judgment, to wit, on —, the said A. B. died [&c. conclude as in forms, ante, 474, 475, Nos. 2, 3, 4, according to the court in which the judgment is].

[See 2 Chit. Ar. Pr. 821.]

3. *The like, against an Executor or Administrator.*

Victoria, [&c. as ante, 458, No. 5,] to the sheriff of —, greeting: Whereas A. B. lately in our court [&c. proceed as in the form, ante, 458, No. 5, to the dagger†, and then thus:] and after the obtaining of the verdict upon which the said judgment was so given as aforesaid, and within two terms before the entry of the said judgment, to wit, on —, the said C. D. died [&c. conclude as in the forms, ante, 476, 477, Nos. 5, 6, 7, according to the court in which the judgment is].

[See 2 Chit. Ar. Pr. 821.]

4. *Execution for or against an Executor or Administrator, where sole Plaintiff or Defendant died between interlocutory and final Judgment.*

[Same as the usual forms in actions by or against executors or administrators, as post, &c.]

5. *The other forms and proceedings in this case may be readily framed from those in the last section, ante, 474 to 487.*

SECTION IV.

SCIRE FACIAS UPON THE DEATH OF PARTIES BETWEEN INTERLOCUTORY
AND FINAL JUDGMENT.1. *Præcipe for the Writ.*

[Same as ante, 474.]

2. *Scire Facias upon Death of sole Plaintiff, after Interlocutory Judgment,
and before Inquiry sued out (a).*

[Proceed as in the writ of inquiry, see ante, 335, to the words] that the said *A. B.* ought to recover his damages by reason of the premises: and afterwards, and before the issuing of our writ of inquiry to assess the said damages, the said *A. B.* died [&c. here state the will or administration, as in the form, ante, 474, No. 2], as by the information of the said *E. E.* in our said court we have been given to understand. Wherefore the said *E. E.* hath humbly besought us to provide him, as such executor [or "administrator"] as aforesaid, a proper remedy in this behalf; and we being willing that what is just in this behalf should be done [or in *C. P.* or *Exch.* "that those things which in our same court are rightly done, should be duly carried into execution, and that what is just in this behalf should be done"], command you that by honest and lawful men of your bailiwick you make known to the said *C. D.* that he be before us [or in *C. P.* "before our justices," or in *Exch.* "before the barons of our Exchequer"] at Westminster, on —, to show if he has or knows of any thing to say for himself why the said damages should not be assessed against him, and recovered by the said *E. E.* as such executor [or "administrator"] as aforesaid, according to the form of the statute in such case made and provided, if it shall seem expedient for the said *E. E.* so to do; and further to do and receive what our said court before us [or in *C. P.* "our said justices"] shall then and there consider of him in this behalf: [or in *Exch.* instead of the last sentence, "and further &c." say "and in what manner you shall execute this our writ make appear to the barons of our said Exchequer at Westminster, on —,"] and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 823.]

3. *The like, where Plaintiff died after Inquiry sued out, and before same executed.*

[Proceed as in the writ of Inquiry, see ante, 335, to the words] that the said *A. B.* ought to recover his damages by reason of the premises; but because it is unknown to our said court what damages the said *A. B.* hath sustained by reason of the premises aforesaid, therefore we com-

(a) See the forms, Arch. Forms, 338.

manded you that by the oath [*&c. proceed as in the writ of inquiry, ante, 335, in the past tense, to the words*] under your seal and the seals of those by whose oath you should take that inquisition, together with that writ, as by the record and proceedings thereof still remaining in our same court manifestly appears [*or in Exchequer, see ante, 481*]: And afterwards, and before the execution of our writ of inquiry in that behalf, the said *A. B.* died [*&c. here state the will or administration, as in form, ante, 474*], as by the information of the said *E. E.* in our said court we have been given to understand. Wherefore the said *E. E.* hath humbly besought us to provide him, as such executor [*or "administrator"*] as aforesaid, a proper remedy in this behalf, and we being willing [*&c. conclude as in the preceding form.*]

[*See 2 Chit. Ar. Pr. 823.*]

4. The like, where Plaintiff died after Inquiry executed, and before Final Judgment.

[*Proceed as in the writ of inquiry, see ante, 335, to the words*] that the said *A. B.* ought to recover his damages by reason of the premises: but because it was unknown to our said court what damages the said *A. B.* hath sustained by reason of the premises aforesaid, therefore we commanded you that by the oath [*&c. proceed as in the writ of inquiry, ante, 335, in the past tense, to the words*] under your seal and the seals of those by whose oath you should take that inquisition, together with that writ, as by the record and proceedings thereof still remaining in our same court manifestly appears, [*or in Exch. see ante, 481*]: and thereupon a certain inquisition was taken before you, by the oath of twelve honest and lawful men of your bailiwick, by which it was found that the said *A. B.* had sustained damages by means of the premises to £—— over and above his costs and charges by him about his suit in that behalf expended, and for those costs and charges to 40s. And afterwards, after the said damages were so assessed, and before the return of our said writ of inquiry, the said *A. B.* died [*&c. here state the will or administration as in the form, ante, 474*], as by the information of the said *E. E.* in our said court we have been given to understand. Wherefore the said *E. E.* hath humbly besought us to provide him, as such executor [*or "administrator"*] as aforesaid, a proper remedy in this behalf; and we, being willing that what is just in this behalf should be done [*or in C. P. or Exch. "that those things which in our same court are rightly done, should be duly carried into execution, and that what is just in this behalf should be done"*], command you that by honest and lawful men of your bailiwick you make known to the said *C. D.* that he be before us [*or in C. P. "before our justices," or in Exchequer, "before the barons of our Exchequer"*] at Westminster, on —, to show if he has or knows of any thing to say for himself why the said damages, so assessed as aforesaid, should not be recovered by the said *E. E.* as such executor [*or "administrator"*] as aforesaid, according to the form of the statute in such case made and provided, if it shall seem expedient for the said *E. E.* so to do; and further to do and receive what our said court shall then and there consider of him in this behalf; [*or in Exchequer, instead of the last sentence "and further &c." say "and in what manner you shall execute this our writ make appear to the barons of our Exchequer at Westminster, on —,"*] and have you there the names of those by whom you shall so make known to him, and this writ. Witness — (name of

chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 823.]

5. *Scire Facias, upon Death of sole Defendant after Interlocutory and before Final Judgment (a).*

[Proceed as directed in the three preceding forms, Nos. 2, 3, 4, respectively, *mutatis mutandis*, to the words] to show if he has or knows of any thing to say for himself why the said damages should not be assessed against him and recovered [or “so assessed as aforesaid, should not be recovered”] by the said *A. B.* according to the form of the statute in such case made and provided, to be levied of the goods and chattels which were of the said *C. D.* at the time of his death, in the hands of the said *E. F.* to be administered, if it shall expedient for [&c. conclude as in forms, ante, 476.]

[See 2 Chit. Ar. Pr. 823.]

6. *Entry of Proceedings in Sci. Fa. and Judgment by Default in Q. B. for want of Appearance, for an Executor or Administrator, where sole Plaintiff died after Interlocutory Judgment and before Inquiry (b).*

On the — day of —, A. D. — (teste of scire facias.)
Witness — (name of chief justice.)

— (to wit.) Our lady the queen sent to the sheriff of — her writ close in these words, that is to say: Victoria [&c. here copy the scire facias, see form, ante, 487, No. 2, to the end, and proceed as follows:] At which day, before our said lady the queen at Westminster, comes the said *E. E.* executor [or “administrator”] as aforesaid, in his proper person; and the sheriff, to wit, S. S. sheriff of — aforesaid, now here returns, that the said *C. D.* hath nothing in his bailiwick where or by which he can give him notice, as by the said writ he is commanded, nor is the said *C. D.* found in the same; and the said *C. D.* comes not, but makes default [if there have been two sci. fas. see ante, 466]: And hereupon the said *E. E.* executor [or “administrator”] as aforesaid, prays that the damages in the said action may be assessed, and recovered by him the said *E. E.* executor [or “administrator”] as aforesaid, according to the form of the statute in such case made and provided: Therefore it is considered that the damages aforesaid be assessed and recovered by the said *E. E.* executor [or “administrator”] as aforesaid, according to the form of the statute aforesaid, by default of the said *C. D.* according to the force, form, and effect of the said recovery: And because it is unknown to the court of our said lady the queen now here, what damages the said *A. B.* in his lifetime sustained, on occasion of the premises, therefore the sheriff is commanded, that by the oath of twelve honest and lawful men of his bailiwick, he diligently inquire what damages the said *A. B.* in his lifetime sustained, as well by reason of the premises as for his costs and charges by him laid out about his suit in his behalf: and the inquisition which the said sheriff shall thereupon take, he make appear to our said lady the queen at Westminster, on —, under his seal and the seals of

(a) See the form, Arch. Forms, 440.

(b) See forms of entries on judgment by default, ante, 447, 448, 471.

those by whose oath he shall take the said inquisition, together with the writ of our said lady the queen to him thereupon directed; the same day is given to the said *E. E.* executor [or “administrator”] as aforesaid, at the same place: At which day, before our said lady the queen at Westminster aforesaid, comes the said *E. E.* executor [or “administrator”] as aforesaid, in his proper person; and the sheriff, to wit, *S. S.* esquire, sheriff of — aforesaid, now here returns a certain inquisition indented, taken before him at —, on — the — day of —, in the year of our Lord —, by the oath of twelve honest and lawful men of his bailiwick; by which it is found that the said *A. B.* in his lifetime sustained damages by reason of the premises, besides his costs and charges by him laid out about his suit in this behalf, to £—, and for those costs and charges to — shillings. Therefore it is considered that the said *E. E.* executor [or “administrator”] as aforesaid, do recover against the said *C. D.* the damages aforesaid, by the said inquisition in form aforesaid assessed, and also £— for the costs and charges of this suit, by the court of our said lady the queen now here adjudged of increase to the said *E. E.* executor [or “administrator”] as aforesaid, and with his assent; which said damages, costs and charges in the whole amount to £—; and the said *C. D.* in mercy &c.

7. [*The Declaration and Execution, and other Forms of Proceedings applicable to this Section, may be readily framed from those in section 2, ante, 474 to 487, mutatis mutandis.*]

SECTION V.

SCIRE FACIAS UPON THE DEATH OF ONE OF SEVERAL PLAINTIFFS OR DEPENDANTS.

1. *Præcipe for the Writ.*

[*See the form, ante, 474.*]

2. *Scire Facias for a surviving Plaintiff.*

Victoria, [&c. as ante, 458,] to the sheriff of —, greeting: Whereas *A. B.* and *A. D.* lately in our court [&c. state the recovery of the judgment for the two plaintiffs, as ante, 458, No. 5, to the dagger† and then thus:] And afterwards, to wit, on —, the said *A. D.* died, and the said *A. B.* then and there survived him, as by the information of the said *A. B.* in our said court we have been given to understand: And now, on the behalf of the said *A. B.* in our same court, we have been informed, that although judgment be thereupon given [&c. proceed as in the form, ante, 458, No. 5, to the end.]

[*See 2 Chit. Ar. Pr. 824.*]

3. *The like, against a surviving Defendant.*

Victoria, [&c. *as ante*, 458, No. 5,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court [&c. *state the recovery against both defendants, as ante*, 458, No. 5, *to the †, and then thus:*] And afterwards, to wit, on —, the said *E. E.* (*the deceased defendant*) died, and the said *C. D.* there survived him, as by the information of the said *A. B.* in our said court we have been given to understand: And now, on the behalf of the said *A. B.* in our said court, we have been informed, that although judgment be thereupon given [&c. *proceed as in the form, ante*, 458, No. 5, *to the end.*]

4. *The like, for the Executor or Administrator of a surviving Plaintiff.*

Victoria, [&c. *as ante*, 458, No. 5,] to the sheriff of —, greeting: Whereas *A. B.* and *E. B.* lately in our court [&c. *proceed as in the form, ante*, 458, No. 5, *to the words*] yet execution of the debt and damages [or “damages”] still remains to be made. And afterwards, to wit, on —, the said *E. B.* (*the deceased plaintiff*) died, and the said *A. B.* then and there survived him; and afterwards and before execution made on the said judgment, to wit, on —, at —, the said *A. B.* died [&c. *conclude as in the form, ante*, 474, 475, Nos. 2, 3.]

5. *Scire Facias against a surviving Defendant, and the Heir and Tertenants of another (a).*

Victoria, [&c. *as ante*, 458, No. 5,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court [&c. *state the recovery of the judgment against both defendants as ante*, 458, No. 5, *to the dagger†, and then thus:*] And although judgment be thereupon given, yet execution of the damages [or *in debt*, “debt and damages”] aforesaid still remains to be made to the said *A. B.*; And the said *C. D.* is since dead, as by the information of the said *A. B.* in our said court we have been given to understand: wherefore the said *A. B.* hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done [or *in C. P. or Exch.* “that those things which in our same court are rightly done should be duly carried into execution, and that what is just in this behalf should be done”], command you that by honest and lawful men of your bailiwick you make known to the heir of the said *C. D.*, and also to the tenants of all the lands and tenements in your bailiwick, of which the said *C. D.* or any person or persons in trust for him, was or were seised on —, in the — year of our reign, (on which day the judgment aforesaid was given,) or at any time after, and also to the said *E. F.* (*the survivor*), that they be before us [or *in C. P.* “before our justices,” or *in Exch.* “before our barons”] at Westminster on —, that is to say, the said heir and tertenants, to show if they have or know of any thing to say for themselves why the damages [or *in debt*, “debt and damages”] aforesaid ought not to be levied on a moiety of those lands and tenements, and the said *E. F.* to show if he has or knows of any thing to say for himself, why the damages [or *in debt*, “debt and damages”] aforesaid ought not to be levied on the goods and chattels of him the said *E. F.* (except his oxen and beasts of the plough), and also a moiety of all the lands and tenements of which the said *E. F.*,

(a) See the form where the survivor is heir of the deceased defendant, *ante*, 473.

or any person or persons in trust for him, was or were seised in fee simple, on the said —, in the — year aforesaid, (on which day the judgment aforesaid was given,) or at any time after, according to the force, form, and effect of the recovery aforesaid, if it shall seem expedient for him; and further to do and receive [&c. conclude as in the form, ante, 458, No. 5.]

[See 2 Chit. Ar. Pr. 824.]

6. [The Declaration, Plea, Judgment, and Execution, and the other Forms of Proceedings, under this Section, may be readily framed from those ante, 474 to 487, mutatis mutandis.]

SECTION VI.

SCIRE FACIAS UPON THE MARRIAGE OF A FEME PLAINTIFF OR DEFENDANT.

1. *Præcipe for the Writ.*

[Same as the form, ante, 458, No. 4, except in stating the Plaintiffs or Defendants to be "A. B. and E. his wife," or "C. D. and E. his wife," as the case may be.]

2. *Scire Facias by Husband and Wife, on a Judgment recovered by Wife dum sola.*

Victoria, [&c. as ante, 458, No. 5,] to the sheriff of —, greeting: Whereas A. B. (name of wife, as stated in the judgment) lately in our court recovered [&c. state the recovery of the judgment, &c. as ante, 458, No. 5, to the dagger†, and then thus:] And afterwards, and before execution thereupon made, to wit, on —, the said A. B. intermarried with, and took to husband H. H. as by the information of the said H. H. and A. his wife, in our said court we have been given to understand: And now, on the behalf of the said H. H. and A. his wife, we have been informed, that although judgment be thereupon given, yet execution of the damages [or in debt, "debt and damages"] aforesaid still remains to be made to them; wherefore the said H. H. and A. his wife have humbly besought us to provide them a proper remedy in this behalf: And we being willing [&c. proceed as in the form, ante, 458, No. 5, to the end, naming however both the husband and wife as plaintiffs.]

3. *The like, against Husband and Wife, upon Judgment recovered against Wife dum sola.*

Victoria, [&c. as ante, 458, No. 5,] to the sheriff of —, greeting: Whereas A. B. lately in our court [&c. state the recovery of the judgment as ante, 458, No. 5, to the dagger†, describing defendant by the name in which the judgment is recovered against her, and then thus:] And afterwards, and before execution thereupon made, the said C. D. intermarried with and took to husband H. H. And now, on behalf of the said A. B. in our said court, we have been informed, that although judgment be

thereupon given, yet execution of the damages [*or in debt, "debt and damages"*] aforesaid still remains to be made to him: Wherefore the said *A. B.* hath humbly besought us [*&c. proceed as in the form, ante, 458, No. 5, to the end, naming however both the husband and wife as defendants.*]

4. *The like, for a Wife who survived her Husband against an Executor, the original Action having been by Husband and Wife.*

Victoria, [*&c. as ante, 458, No. 5,*] to the sheriff of —, greeting: Whereas *A. B.* and *E.* his wife, lately in our court [*&c. state the recovery of the judgment as ante, 458, No. 5, to the dagger†, and then thus:*] And afterwards, and before execution thereupon made, to wit, on —, the said *C. D.* (*the defendant*) died, having first duly made and published his last will and testament in writing, and thereby constituted and appointed *E. E.* executor thereof; after whose death the said *E. E.* duly proved the said last will and testament of the said *C. D.* and took upon himself the burthen of the execution thereof; and afterwards and before execution upon the said judgment made, to wit, on —, at —, the said *A. B.* also died, and the said *E.* then and there survived him, as by the information of the said *E.* in our said court we have been given to understand: And now, on the behalf of the said *E.* in our said court, we have been informed, that although judgment be thereupon given, yet execution of the damages [*or in debt, "debt and damages"*] aforesaid still remains to be made; wherefore the said *E.* hath humbly besought us to provide her a proper remedy in this behalf: and we being willing [*&c. as ante, 458, No. 5*], command you, that by honest and lawful men of your bailiwick, you make known to the said *E. E.* executor as aforesaid, that he be before us [*or in C. P. "before our justices," or in Exch. "before our barons"*] at Westminster, on —, to show if he hath or knoweth of any thing to say for himself why the said *E.* ought not to have her execution against him, of the damages [*or in debt, "debt and damages"*] aforesaid to be levied of the goods and chattels which were of the said *C. D.* at the time of his death, in the hands of the said *E. E.* as executor as aforesaid, to be administered according to the force, form, and effect of the said recovery, if it shall seem expedient [*&c. conclude as ante, 458, No. 5.*]

5. [*The Declaration, Plea, Judgment, Execution, and other Forms of Proceedings under this Section, may be readily framed from those ante, 469 to 473, mutatis mutandis, and styling the Plaintiff or Defendant as "A. B. and E. his wife," or "C. D. and E. his wife," as the case may be.*]

SECTION VII.

SCIRE FACIAS IN CASE OF BANKRUPTCY.

1. *Præcipe for the writ.*

[*Same as ante, 458, No. 4, except in styling the Plaintiffs as "A. B. and C. D. assignees of the estate and effects of A. B. bankrupt."*]

2. *Scire Facias by Assignees on Judgment recovered before the Bankruptcy.*

Victoria, [&c. as ante, 458, No. 5,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court [&c. state the recovery of the judgment, as ante, 458, No. 5, to the dagger†, and then thus:] And afterwards the said *A. B.* became bankrupt within the true intent and meaning of the statutes concerning bankrupts: whereupon a fiat of bankruptcy, under the great seal of the united kingdom of Great Britain and Ireland, was duly issued against the said *A. B.*; and all and singular the debts, goods, and effects of the said *A. B.*, at the time of his becoming bankrupt, were, after his so becoming bankrupt, in due manner assigned to *A. D.* and *P. A.* according to the form of the statutes in such case made and provided: And now, on the behalf of the said *A. D.* and *P. A.* assignees, as aforesaid, in our said court, we have been informed, that although judgment be thereupon given [&c. conclude as in the form ante, 458, No. 5, to the end, except in omitting the plaintiff's name as plaintiff, and inserting instead thereof *A. D.* and *P. A.* as assignees as aforesaid.]

[See 2 Chit. Ar. Pr. 825.]

3. [The Declaration, Plea, Judgment, Execution, and other Proceedings under this Section, may be readily framed from those, ante, 469 to 473, stating, however, instead of the name of the Bankrupt as Plaintiff, the names of the Assignees, and styling them as Assignees.]

BOOK III.

PART II.

PROCEEDINGS IN ACTIONS BY AND AGAINST PARTICULAR PERSONS.

CHAPTER I.

ACTIONS AGAINST PEERS AND MEMBERS OF PARLIAMENT.

SECT. I.—PROCEEDINGS AGAINST IN ORDINARY CASES.

[The forms of proceedings against peers and members of parliament are now the same as in ordinary cases, except, in a declaration against a peer in assigning a breach, it is usual to omit the averment of the defendant's fraudulent intent. No *ca. sa.* lies against a peer or member of parliament.]

[See 2 *Chit. Ar. Pr.* 838.]

SECTION II.

PROCEEDINGS AGAINST MEMBERS OF PARLIAMENT, SUBJECT TO THE BANKRUPT LAWS.

1. *Affidavit of Debt.*

[*Proceed as in the forms, ante, 206, &c. but add "And this deponent further saith, that the said C. D. is a trader within the description of the statute relating to bankrupts, as this deponent hath heard and verily believes."*]

[See 2 *Chit. Ar. Pr.* 839.]

2. *Bond.*

[*Proceed as in the ordinary form of a bond, but make it conditioned to pay such damages and costs as the plaintiff may recover in the action.*]

3. *Writ of Summons.*

Victoria, [*&c. as ante, 228, No. 2,*] to C. D. of —, esquire, having privilege of parliament, greeting: We command you, that within one calendar month next after personal service hereof on you, you do cause

an appearance to be entered for you in our court of —, in an action on promises, [or "debt," as the case may be,] at the suit of A. B.; and you are hereby informed, that an affidavit of debt for the sum of £— hath been filed in the proper office, according to the provisions of a certain act of parliament made and passed in the sixth year of the reign of his late majesty King George the Fourth, intituled "An Act to amend the Laws relating to Bankrupts," and that unless you pay, secure, or compound for the debt sought to be recovered in this action, or enter into such bond as by the said act is provided, and cause an appearance to be entered for you, within one calendar month next after such service hereof, you will be deemed to have committed an act of bankruptcy from the time of the service hereof. Witness —, at Westminster, the — day of —, in the year of our Lord 1840.

N.B. This writ is to be served within four calendar months from the date thereof, including the day of such date, and not afterwards.

Indorsements thereon.

[To be indorsed with the name of the plaintiff or his attorney, in like manner as the writ of *capias*, ante, 229.]

[See 2 Chit. Ar. Pr. 840.]

CHAPTER II.

ACTIONS BY AND AGAINST CORPORATIONS OR HUNDREDOES.

1. *Actions by Corporations.*

[*The same as in ordinary cases, in bailable or non-bailable actions, naming the corporation by its corporate name.*]

[*See 2 Chit. Ar. Pr. 841.*]

2. *Actions against Corporations.*

[*The same as directed, ante, 15, naming the corporation by its corporate name.*]

[*See 2 Chit. Ar. Pr. 841.*]

3. *Actions against Hundredors.*

[*The same as directed, ante, 15, naming the defendants as "the men inhabiting within the (hundred) of —, in the county of —." See further 2 Chit. Ar. Pr. 842. See also various forms, Chit. Gen. Prac. of Law, 581, &c.*]

4. *Fi. fa. against Inhabitants of a Hundred.*

Victoria, by the grace of God of the united kingdom of great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting. We command you, that of the goods and chattels of the men inhabiting within the hundred called —, in your county, you cause to be made £—, which *A. B.* lately in our court before us [*or in C. P. "before our justices of the bench," or in Exch. "before the barons of our Exchequer"*] at Westminster, by the judgment of the said court recovered against the said men inhabiting within the hundred aforesaid, for his damages which he had sustained, as well by means of the committing of certain grievances against the said *A. B.*, against our peace and against the form of the statute in that case made and provided, as also for the costs and charges of the said *A. B.* by him about his suit in this behalf expended, whereof the said men inhabiting within the hundred aforesaid are convicted, as appears to us of record, [*or in C. P. omit the words "as appears to us of record," or in Exch. instead of those words, say "as by inspecting the rolls of our Exchequer fully appears,"*] together with interest upon the said sum of £—, at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up [*or if entered up before 1st October, 1838, say, "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*], and have you that money, together with such interest as aforesaid, before us [*or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer"*] at

Westminster, immediately after the execution hereof, to render to the said *A. B.* for his damages aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices," or in Exch. "the said barons"*] at Westminster, immediately after the execution thereof, and have there then [*or in C. P. or Exch. omit "then"*] this writ. Witness ——— (*name of chief justice or baron*), at Westminster, the ——— day of ———, in the year of our Lord ———.

[*See 2 Chit. Ar. Pr. 878, 844.*]

CHAPTER III.

ACTIONS BY AND AGAINST ATTORNIES OR OFFICERS.

[*Same as in ordinary cases. See 2 Chit. Ar. Pr. 846, 847.*]

[*Forms relating to articulated clerks, ante, 1 to 7.*]

[*Forms relating to re-admission, &c. of attornies, ante, 7 to 11.*]

[*Writ of Privilege, ante, 14.*]

[*Summons and order &c. for taxing &c. bill, ante, 13.*]

CHAPTER IV.

PROCEEDINGS BY AND AGAINST PRISONERS.

SECTION I.

ACTIONS AGAINST PRISONERS.

1. *Affidavit of Debt.*

[*Same as usual, see the forms, ante, 206 to 227.*]
[*See 2 Chit. Ar. Pr. 851.*]

2. *Proceedings to obtain Prisoner's Discharge out of Custody, on ground of Writ having been issued without the Attorney's Authority, &c.* [*See the forms, ante, 230, 231.*]

3. *Bail.*

[*See the forms, ante, 264.*]

4. *Declaration.*

The declaration is the same as in ordinary cases.

5. *Affidavit of delivery of Copy of Declaration against Prisoner in Custody of the Sheriff, &c.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

C. C. of —, clerk to P. A. gentleman, attorney for the above-named plaintiff, maketh oath and saith, that he did on the — day of — instant [*or "last"*] deliver unto H. G. the gaoler or keeper of her majesty's gaol or prison in and for the county of — a true copy of the declaration hereunto annexed, and the said gaoler or keeper then acknowledged to this deponent that the said defendant was at that time a prisoner in the said gaol or prison, by virtue of a writ of capias issued out of this honourable court at the suit of the said plaintiff.

Sworn [*&c. ante, 207.*]

6. *The like, against a Prisoner in Custody of Marshal or Warden.*

C. C. of —, clerk to P. A. gentleman, attorney for the above-named plaintiff, maketh oath and saith, that he did on the — day of — instant [*or "last"*] deliver unto H. G. one of the turnkeys of the Queen's Bench [*or "Fleet"*] prison, at the lodge of the said prison, a true copy of the declaration hereunto annexed, and the said turnkey then acknowledged to this deponent that the said defendant was at that time a prisoner in the said prison at the suit of the said plaintiff.

Sworn [*&c. ante, 207.*]

7. *Notice to Marshal or Warden of a Writ of Error, Order, Agreement, or other Matter, to prevent a Supersedeas for not declaring, &c. in the usually limited time (a).*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between A. B. plaintiff and C. D. (a prisoner) defendant.

Take notice that [*&c. here state that the writ of error has been brought or special order obtained, or the agreement entered into or other the special matter, which may be assigned as a reason for the plaintiff's not declaring (a), proceeding to trial or judgment, or charging the defendant in execution in the usual limited time.*] And that on account of the premises the plaintiff has not declared (a) [*or "proceeded to trial &c." or "will not declare &c."*] within the time prescribed by the rules and practice of the court in that behalf. Dated this — day of —, 1840.

Your's &c.

P. A. plaintiff's
attorney.

To the Marshal of the Queen's Bench

Prison [*or "to the warden of the Fleet."*]

[*See 2 Chit. Ar. Pr. 866.*]

8. *Plea, &c.*

[*All the forms, ante, 38, &c. will, since the rule of T. T. 3 Will. 4, be applicable to the case of a prisoner, mutatis mutandis; and so will all the other forms, as used in ordinary cases, to final judgment inclusive.*]

9. *Rule on Marshal to acknowledge Defendant in his Custody.*

On —, the — day of —, in the —
year of Queen Victoria.

A. B. } It is ordered that the marshal of the Marshalsea of this
against } court shall bring the defendant into this court within three
C. D. } days next after notice of this rule to be given to him, or
a prisoner. } shall give a note in writing under his hand, acknowledging
the defendant to be in his actual custody; or shall show cause to the contrary, within the time aforesaid, upon notice thereof being given to the attorney for the plaintiff.

Side bar.

By the Court.

[*See 2 Chit. Ar. Pr. 858.*]

(a) It may be doubted whether under the present process, issued by virtue of 1 & 2 Vict. c. 110, s. 3, the prisoner will be supersedeable if the plaintiff do not declare within two terms, see 2 Chit. Ar. Pr. 852. As

the point however has not been decided, it is thought better to retain the forms applicable to the case of supersedeas for want of a declaration, especially as they will be useful in framing forms applicable to other cases.

10. *Committitur Piece in Q. B.*

(venue) to wit: *C. D.* is committed to the custody of the Marshalsea of our lady the queen before the queen herself, at the suit of *A. B.* in an action of debt for £—, and £— damages, [or in *assumpsit*, "in an action upon promises for £— damages,"] there to remain until &c.
P. A. attorney.

Judgment of the — day of —, 1840.
 Roll — (a).

[See 2 *Chit. Ar. Pr.* 859.]

11. *Entry of Committitur on Roll, in Q. B. (b)*

Afterwards, that is to say, on —, in the — year of the reign aforesaid, before our said lady the queen at Westminster, comes the said *A. B.* by his attorney aforesaid [or "in his proper person"]; and the said *C. D.* being now present here in court, is, at the prayer of the said *A. B.* by the said court of our lady the queen before the queen herself, committed to the custody of the marshal of the Marshalsea of our said lady the queen before the queen herself, in execution for the damages [or "debt and damages"] aforesaid, there to remain until the said *A. B.* shall be fully satisfied the said damages [or "debt and damages."]
 [See 2 *Chit. Ar. Pr.* 859.]

12. *Habeas Corpus ad Satisfaciendum to the Warden in C. P.*

[See the form, post.]

13. *Entry of Committitur, on Habeas Corpus ad Satisfaciendum in C. P.*

Afterwards, that is to say, on —, in — term, in the — year of the reign of the lady the now queen, comes here the said *A. B.* by his attorney aforesaid, and prays the writ of the said lady the queen of *habeas corpus ad satisfaciendum*, to be directed to the warden of her said majesty's prison of the Fleet, in whose custody the said *C. D.* now is, commanding him that he have before the justices of the said lady the queen at Westminster the body of the said *C. D.* under safe and secure conduct, together with the day and cause of his being taken and detained, to satisfy the said *A. B.* his damages [or in debt, "debt and damages"] aforesaid; and it is granted to him, returnable on —. At which day comes here the said *A. B.* by his attorney aforesaid; and the said *C. D.* being now present here in court, doth not satisfy the said *A. B.* his damages [or "debt and damages"] aforesaid, or any part thereof; and hereupon at the prayer of the said *A. B.* the said *C. D.* is by the justices here committed to the custody of the warden of her said majesty's prison of the Fleet, in execution, for the damages [or "debt and damages"] aforesaid, there to remain until the said *A. B.* shall be fully satisfied the said damages [or "debt and damages."]

(a) If the final judgment be entered on a roll of a preceding term to that in which it is signed, as after an *interlocutory* judgment, &c. mention the term as well as the number of the

roll. Tidd's Forms, 128.

(b) *Semble*, this is not necessary to complete the charging of defendant in execution. See 2 *Chit. Ar. Pr.* 859.

14. *Order of Commitment in the Exchequer (a).*

— term, in the — year of the reign of
Queen Victoria.

A. B. plaintiff against *C. D.* defendant.

On which day the said defendant *C. D.* was brought to the bar of this court, by virtue of her majesty's writ of habeas corpus, directed to the warden of her majesty's prison of the Fleet, to satisfy *A. B.* of £—, which the said *A. B.* in her majesty's court, before the barons of her Exchequer at Westminster, recovered against him the said *C. D.* for his damages which he had sustained by reason of the not performing certain promises [and undertakings] lately made by the said *C. D.* to the said *A. B.* [or if in debt, see ante, 458, No. 5,] whereof he is convicted; whereupon, on reading the said writ of habeas corpus, and the return made thereon by —, esq., warden of her said majesty's prison of the Fleet, and the record of the judgment in this court, against the said *C. D.* at the suit of the said *A. B.*, and upon the motion of Mr. — of counsel for the said plaintiff, it is ordered that the defendant *C. D.* be remanded to the custody of the warden of her said majesty's prison of the Fleet, charged in execution at the suit of the said *A. B.* for the said sum of £—, being the damages [or "debt and damages"] aforesaid, there to remain until he shall fully satisfy the said *A. B.* the damages [or "debt and damages"] aforesaid.

By the Court.

SECTION II.

PROCEEDINGS BY PRISONERS FOR A DAY RULE.

1. *Petition for a Day Rule, in Q. B.*

To the Right Honourable the Lord Chief Justice, and
the rest of the Justices of her Majesty's Court of
Queen's Bench, Westminster.

The humble petition of several prisoners in actual custody of the marshal of this court, whose names are hereunto subscribed,
Sheweth,

That your said petitioners, having this day occasion to treat with their several creditors, advise with counsel, and follow their several suits at law, in order to their discharge, humbly pray, that they may have leave to go out of the said prison this day, for the purposes aforesaid, and to return again the same day.

And your petitioners shall ever pray &c.

C. D.
E. F.

[Names of the prisoners requiring the rule.]

C. C. clerk of the rules of the Queen's Bench Prison,

The — day of —, 1840.

[See 2 Chit. Ar. Pr. 862.]

(a) See the form, Tidd's Forms, 192.

2. Day Rule thereon.

England. Upon reading the petition of *C. D.* a prisoner in the custody of the marshal of the Marshalsea of this court, this day presented to this court, thereby praying that the said *C. D.* might have leave to go out of the said prison, for the purposes in the said petition set forth; it is ordered, that the said *C. D.* have leave to go out of the said prison, he returning again into the custody of the said marshal on this day.

By the Court

[See 2 Chit. Ar. Pr. 862.]

A. B. hath this day a rule of court to go out of the prison of the Queen's Bench granted to him to transact his affairs, and to return again before 9 o'clock on the same day. Dated this — day of —.

— clerk of the day rules.

3. Security to the Marshal for a Prisoner's keeping within the Rules.

Whereas *C. D.* late of —, is now a prisoner in the custody of *T. C.*, esquire, marshal of the Queen's Bench prison, for debt: And whereas the said *T. C.* at our request, doth hereby consent and agree to permit the said *C. D.*, so being such prisoner as aforesaid, to reside and be within the rules of the said prison, during his imprisonment for debt as aforesaid, or so long as he shall conduct himself properly within the said rules. In consideration thereof we do hereby jointly and severally undertake to indemnify the said *T. C.*, his executors and administrators, from any escape or escapes of the said *C. D.*, until such time as he shall be lawfully discharged from the custody of the said *T. C.* as such marshal as aforesaid: And we do hereby also jointly and severally undertake to reimburse to the said *T. C.*, his executors and administrators, all loss, costs, charges, damages, and expenses which he or they may bear, pay, expend, or be put unto, by reason of any action or actions, suit or suits, motion or motions which may hereafter be brought, commenced, or made against him, or them, or either of them, for any escape or escapes of the said *C. D.* as aforesaid, or any misconduct of the said *C. D.* whilst so residing within the said rules as aforesaid. Dated this — day of —, 1840.

Witness *C. C.*

R. B.
T. W.

SECTION III.

DISCHARGE OF PRISONERS BY SUPERSEDEAS.

1. Summons for Supersedeas in Q. B. or C. P. (a)

B. v. D. } Let the plaintiff's attorney [or "agent"] attend me at my chambers in Rolls' Garden, at — of the clock in the forenoon [or "afternoon"], to show cause why the defendant should not be superseded as to this action; the plaintiff not having declared (*b*) [or "proceeded to trial," or "proceeded to final judgment," or "proceeded to execution,"]

(a) See the forms as to a supersedeas, where the defendant has perfected bail, *ante*, 267.

(b) See *ante*, 501, n. (a).

against him in due time, [&c. (as the grounds for the supersedeas may be.)]

[See 2 Chit. Ar. Pr. 867.]

2. *Order thereon.*

B. } Upon hearing the attornies [or "agents"] on both sides, and upon
v. } reading the affidavit of W. W. I order that the defendant be dis-
D. } charged out of the custody of the sheriff of — [or "marshal of
the Marshalsea," or "warden of the prison of the Fleet"], as to this action,
by writ of supersedeas, on entering a common appearance. Dated the
— day of —, 18—.

[See 2 Chit. Ar. Pr. 867.]

3. *Common Appearance.*

[See the form, ante, 17; 2 Chit. Ar. Pr. 867.]

4. *Gaoler's Certificate of Causes.*

I, K. K., keeper of her majesty's gaol in and for the county of —, hereby certify, that C. D. was on — last committed to the said gaol, by virtue of a writ of capias, at the suit of A. B. in an action on promises [or "of debt," as the case may be.] Dated the — day of —, A. D. —. And I hereby further certify, that since the said commitment no declaration against the said C. D. at the suit of the said A. B. hath been delivered to me or my turnkey [or if a declaration have been delivered, but the plaintiff have neglected to charge the prisoner in execution in time, then say, "that since the said commitment, in — term last, a declaration against the said C. D. at the suit of the said A. B. hath been delivered to me, which I thereupon immediately delivered to the said C. D. but the said C. D. hath not since been charged in execution in the said suit"]; and that no writ of habeas corpus hath been brought for the removal of the said C. D. Given under my hand this — day of —, 18—.

Witness W. W.

K. K.

[See 2 Chit. Ar. Pr. 867.]

5. *Affidavit of the Gaoler's signing thereof, in Q. B. or C. P.*

In the Queen's Bench [or "Common Pleas."]

Between A. B. plaintiff and C. D. (a prisoner) defendant.

W. W. of —, maketh oath and saith, that he this deponent, on — last was present and did see K. K. keeper of her majesty's gaol in and for the county of —, subscribe his name to the certificate hereunto annexed; and that the name W. W. thereto subscribed as witness thereof, is the name and handwriting of this deponent, and that at the same time this deponent subscribed such his name as such witness.

W. W.

Sworn [&c. ante, 207.]

[See 2 Chit. Ar. Pr. 867.]

6. *Præcipe for Supersedeas, in Q. B.*

— (to wit.) Supersedeas for C. D. at the suit of A. B.

D. A. attorney.

7. *Writ of Supersedeas to the Sheriff, for not declaring (a).*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas C. D. on the — day of — last [or “in the — year of our reign”], was arrested [or “detained in our prison”] by you [or “the late sheriff of —”], under and by virtue of our writ of capias to you [or “the said late sheriff”] directed, and which issued out of our court of Q. B. [or “C. P.” or “Exchequer of Pleas”] against the said C. D. to answer the said A. B. in an action on promises [or *as the plea is*], and the said C. D. is now detained in our prison in your custody by virtue of the said writ*, and because the said A. B. hath not declared against the said C. D. in the said action before the end of the next term after the said C. D. was so arrested [or “detained”] as aforesaid, and the said C. D. hath appeared in our said court to answer the said A. B. in the action aforesaid, therefore we command you, that if the said C. D. be detained in our prison under your custody, by virtue of the said writ, and for no other cause, then do you immediately discharge the said C. D. out of your custody, and permit him to go at large, as you will answer the contrary at your peril. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

In the Exchequer the following memorandum and indorsement is usually made on the supersedeas: “Issued the — day of — (date of judge’s order). By order of Mr. Baron —, bearing date the — day of —, 18—.”

[See 2 Chit. Ar. Pr. 867.]

8. *The like, to the Warden, where the Defendant rendered in discharge of his Bail (a).*

Victoria, [*&c. as in preceding form,*] to the warden of our prison of the Fleet, greeting:—Whereas C. D. on the — day of — last [or “in the — year of our reign”] did render himself in discharge of his bail and give notice thereof, at the suit of A. B. in an action on promises [or *as the plea is*], commenced by our writ of capias, issuing out of our court of —, and was thereupon committed by Mr. Justice — to our said prison of the Fleet, where he is now detained under your custody, at the suit of the said A. B. in the action aforesaid*: and whereas no proceeding by declaration had been had by the said A. B. against the said C. D. before the render and commitment aforesaid: and because it sufficiently appears to our said justices at Westminster, that the said A. B. hath not declared against the said C. D. before the end of the next term after such render and notice thereof; and that the said C. D. hath appeared in our said court to answer the said A. B. in the action aforesaid; therefore we command you, that if the said C. D. be detained in our said prison of the

(a) See *ante*, 501, n. (a), as to supersedeas for want of a declaration. See form of writ of supersedeas to sheriff upon defendant’s putting in

good bail, *ante*, 267. See a form of writ of supersedeas in Exchequer, on process for contempt, Tidd’s Forms, 131.

Fleet under your custody, by virtue of the said commitment, and for no other cause, then do you immediately discharge the said C. D. out of your custody, and permit him to go at large, as you will answer the contrary at your peril. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 867.]

9. *Writ of Supersedeas to the Sheriff, for not proceeding to Trial or final Judgment, in Q. B.*

[Proceed as in the form, ante, 506, No. 7, to the asterisk*, and then thus:] And whereas the said C. D. on the — day of — last past, was charged with a declaration, at the suit of the said A. B. upon the writ aforesaid: but because it appears to us that the said A. B. hath not proceeded to trial or final judgment against the said C. D. within three terms next after the delivery of the said declaration, according to the course and practice of our court before us, and because the said C. D. hath come into our said court before us, and appeared at the suit of the said A. B. in the action aforesaid; therefore we command you, that if the said C. D. be detained [&c. conclude as in the form, ante, 506, No. 7.]

[See 2 Chit. Ar. Pr. 867, 864.]

10. *The like, in C. P.*

[Proceed as in the form, ante, 506, No. 7, to the asterisk*, and then thus:] And whereas the said C. D. on the — day of — last past was charged with a declaration at the suit of the said A. B. in the action aforesaid; but because it sufficiently appears to our said justices at Westminster, that the said A. B. hath not further proceeded to judgment against the said C. D. within three terms after the delivery of the said declaration, as required by the rules of our court of the Bench, before our justices aforesaid; and that the said C. D. hath appeared in our said court to answer the said A. B. in the action aforesaid; therefore we command you, that if the said C. D. be detained [&c. conclude as in the form, ante, 506, No. 7.]

11. *The like, to the Warden, where the Defendant was rendered in Discharge of his Bail.*

[Proceed as in the form, ante, 506, No. 8, to the asterisk*, and then thus:] And whereas the said C. D. after the said render and commitment, on the — day of — last past, was charged with a declaration at the suit of the said A. B. in the action aforesaid; [or if the render was after the declaration say, "And whereas the said A. B. had declared against the said C. D. in the action aforesaid; but had not further proceeded to judgment thereupon, before the render and commitment aforesaid: And because it sufficiently appears to our said justices at Westminster, that the said A. B. hath not further proceeded to judgment," [&c. conclude as in the form, supra, No. 10.]

12. *The like, to the Warden, where the Prisoner had rendered himself in Discharge of Bail in Q. B. and was removed to the Fleet by Habeas Corpus (a).*

Victoria, [&c. ante, 506, No. 7,] to the warden of our prison of the

(a) See the form, Tidd's Forms, 130.

Fleet, greeting: whereas *C. D.* was lately committed to and is detained in our said prison under your custody, upon and by virtue of our writ of *habeas corpus cum causá*, directed to the marshal of our prison of the Marshalsea; and by the return thereof it appeared that the said *C. D.* had rendered himself, and was committed to the said marshal's custody, in discharge of his bail, at the suit of *A. B.*, in an action on promises, [*or as the plea is,*] depending in our court before us at Westminster; and the said *A. B.* hath declared in our said court before us against the said *C. D.* in the action aforesaid; and because it appears to us that the said *A. B.* hath not proceeded to trial or final judgment against the said *C. D.* in the plea aforesaid, in due time, according to the rules of our said court before us; and because the said *C. D.* hath appeared in our said court before us, at the suit of the said *A. B.* in the action aforesaid; therefore we command you, that if the said *C. D.* be detained in our said prison of the Fleet under your custody, for the cause aforesaid, and no other, then do you immediately discharge the said *C. D.* [*&c. conclude as ante, 506, No. 7.*]

13. *Writ of Supersedeas to the Sheriff for not charging the Defendant in Execution.*

[*Proceed as in the form, ante, 506, No. 7, to the asterisk*, and then thus:*] And whereas the said *A. B.* in — term last past, obtained final judgment, [*or "proceeded to trial and obtained a verdict in an action,"*] in our court before us, [*or "before our justices," or "before our barons,"*] against the said *C. D.* upon the said writ: but because the said *A. B.* hath not proceeded to charge the said *C. D.* in execution within two terms after the said final judgment so obtained, [*or "trial so had,"*] according to the course and practice of our said court; and because the said *C. D.* hath come into our said court and appeared [*&c. conclude as in the form, ante, 506, No. 7.*]

[*See 2 Chit. Ar. Pr. 867, 864.*]

14. *The like, to the Warden.*

[*Proceed as in the form, ante, 506, No. 8, according to the facts, to the asterisk*, and then thus:*] And whereas the said *A. B.* in — term last past obtained final judgment [*&c. conclude as in the preceding form.*]

15. *The like, to the Warden on a Render after Judgment.*

[*Proceed as in the form, ante, 506, No. 8, to the asterisk*, and then thus:*] And whereas judgment had been obtained by the said *A. B.* against the said *C. D.* in the action aforesaid; but the said *A. B.* had not proceeded to execution thereupon before the render and commitment aforesaid; and because the said *A. B.* hath not proceeded to charge the said *C. D.* in execution, upon the said judgment, within two terms next after the render and commitment aforesaid, as required by the rules of our said court, therefore we command you [*&c. conclude as in the form, ante, 506, No. 7.*]

SECTION IV.

DISCHARGE OF A PRISONER UNDER STATUTE 48 GEO. 3, c. 123 (a).

1. *Notice of Prisoner's Intention to apply.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff and C. D. (a prisoner) defendant.

Mr. A. B.

Take notice, that I shall on — next, or as soon after as I [or "counsel"] can be heard in this behalf, make application to her majesty's court of Queen's Bench [or "C. P." or "Exch. of Pleas"] at Westminster, to be discharged out of the custody of the sheriff of —, [or "of the marshal of the Marshalsea" or "warden of the Fleet,"] as to this action at your suit, according to the form of the statute in such case made and provided; I having been imprisoned and having lain in prison for the space of twelve successive calendar months, in execution upon the judgment herein obtained by you, for damages, [or "debt and damages,"] not exceeding the sum of twenty pounds, exclusive of costs; and hereunder written [or "annexed hereto"] is a copy of the affidavit upon which I shall ground the said application. Dated the — day of —, A. D. —.

Your's &c.

Witness W. W.

C. D.

[See 2 Chit. Ar. Pr. 869.]

2. *Affidavit to obtain the Rule.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff v. C. D. (a prisoner) defendant (b).

C. D. the above-named defendant, now a prisoner in the Queen's Bench prison, [or "in the prison of the Fleet" or "county gaol of —,"] maketh oath and saith, that on the — day of —, in the year of our Lord —, A. B. the above-named plaintiff obtained a judgment in this suit against this deponent, for £— damages, [or "debt and damages,"] exclusive of costs. And this deponent further saith, that on the — day of —, in the year aforesaid, he this deponent was charged in execution upon the said judgment, at the suit of the said A. B. and hath ever since been detained in custody, and hath lain in prison in the Queen's Bench prison, [or "prison of the Fleet," or "county gaol of —,"] aforesaid, in execution upon the said judgment as aforesaid. And this deponent further saith, that he did on — personally serve the above-named plaintiff with a notice signed by this deponent, a true copy whereof is hereunto annexed, [or if the service was not personal state it accordingly.]

Sworn [&c. as ante, 207.]

C. D.

[See 2 Chit. Ar. Pr. 869.]

(a) The right to be discharged under this act is not affected by 1 & 2 Vict. c. 110, s. 41, *Chew v. Lye*, 7 Dowl. 465.

(b) If the defendant be in execution on a judgment of an inferior court,

then entitle the affidavit in the court in which the application for the discharge is made, but not entitling it in any cause, and state in the affidavit the nature of the action and the court in which it was brought.

CHAPTER V.

ACTIONS BY AND AGAINST EXECUTORS OR ADMINISTRATORS.

1. *Affidavit to hold to Bail by an Executor or Administrator.*

[See forms, ante, 211.]

2. *Process.*

[Same as usual, see forms of Writ of Summons, ante, 18, and of Writ of Capias, &c. ante, 228; but describe the plaintiff or defendant, if an executor, thus: "A. B. executor of the last will and testament of E. F. deceased," or if an administrator, describe him thus: "A. B. administrator of all and singular the goods, chattels, and effects of E. F. deceased, at the time of his death, who died intestate," or it seems that such description may be altogether omitted, at least in the writs of summons and distringas.

3. *Declaration, Plea, &c.*

[Get the declaration or plea drawn or settled by counsel or pleader. The other practical proceedings are the same as in ordinary cases, merely adding after the name of the plaintiff or defendant, where it first occurs, his addition as executor or administrator, as in the process supra, and wherever afterwards it occurs, the words "as executor as aforesaid," or "as administrator as aforesaid," as the case may be.]

4. *Scire Facias, by an Executor or Administrator, to revive a Judgment obtained by Testator or Intestate.*

[See forms, ante, 474 to 491.]

5. *Judgment by Cognovit in Assumpsit, against an Executor or Administrator (a).*

[Proceed as in the form, ante, 320, to the end of the declaration, and then on a new line thus:] And on — the defendant by D. A. his attorney says that he cannot deny the action of the plaintiff, nor but that the said E. F. in his life-time did promise in manner and form as the plaintiff hath above in that behalf alleged; nor but that the plaintiff hath sustained damages [&c. proceed as in the form, ante, 320, to the judgment, which is thus:] Therefore it is considered that the plaintiff do recover against the defendant, as executor [or "administrator"] as aforesaid, his damages aforesaid, to £——, in form aforesaid acknowledged, and also £—— for his said costs and charges, by the court here adjudged to the plaintiff, and with his assent, which said damages, costs, and charges, in the whole amount to £——, to be levied of the goods and chattels which were of

(a) See form of cognovit by an executor, ante, 319.

the said *E. F.* at the time of his death in the hands of the defendant, as executor [or “administrator”] as aforesaid, to be administered, if he hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then £—— parcel of the damages aforesaid, being for his costs and charges aforesaid, to be levied of the proper goods and chattels of the defendant; and the defendant in mercy, &c. [*Add the marginal notes as directed at end of form, ante, 320, No. 9.*]

[*See 2 Chit. Ar. Pr. 679, 878.*]

6. *The like, in Debt on Bond.*

[*Proceed as directed in the form, ante, 321, No. 11, to the end of the declaration, and then thus:*] And on ——, the defendant by *D. A.* his attorney, says, that he cannot deny the action of the plaintiff, nor but that the said writing obligatory is the deed of the said *E. F.*, nor but that the defendant detains from the plaintiff the said sum of £—— above demanded, in manner and form as the plaintiff hath above in that behalf alleged: Therefore it is considered that the plaintiff do recover against the defendant, as executor [or “administrator”] as aforesaid, his said debt, and also £—— for his damages which he hath sustained, as well on occasion of the detaining of the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff, and with his assent, to be levied of the goods and chattels which were of the said *F. F.* at the time of his death, in the hands of the defendant as executor [or “administrator”] as aforesaid to be administered, if he hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then the said £——, parcel of the damages aforesaid, being for his costs and charges aforesaid, to be levied of the proper goods and chattels of the defendant: and the defendant in mercy &c. [*Add the marginal notes as directed at end of the form, ante, 321, No. 11.*]

[*See 2 Chit. Ar. Pr. 878.*]

7. *Judgment of Assets in futuro, in Assumpsit, on Plea of Plene administravit, or Plene administravit præter a Judgment or Specialty Debt when pleaded alone.*

[*Proceed as in the form, ante, 102, to the end of the plea of plene administravit, and then thus:*] And hereupon on ——, the plaintiff, inasmuch as the defendant doth not deny the action of the plaintiff, nor but that the said *E. F.* in his lifetime did promise in manner and form as the plaintiff hath in that behalf alleged, and inasmuch as the plaintiff cannot deny but that the defendant had not any goods and chattels which were of the said *E. F.* at the time of his death in his hands to be administered, in manner and form as the defendant hath above in the said plea in that behalf alleged, prays judgment, and his damages by him sustained, on occasion of the not performing of the said promises in the said declaration mentioned to be adjudged to him, to be levied on the goods and chattels which were of the said *E. F.* at the time of his death, and which since the pleading of the said plea of the defendant have come or which shall hereafter come to the hands of the defendant to be administered [*or if the plea were of bonds &c. outstanding and plene administravit præter, here add the following words, “after satisfying the monies due and owing on the said several judgments, indentures, and writings obligatory in the said plea respectively mentioned”*]: Therefore it is considered that the plaintiff ought to recover against the defendant as executor [or “admi-

nistrator'] as aforesaid his damages by him sustained on occasion of the not performing of the said promises in the said declaration mentioned, to be levied in form aforesaid; but because it is unknown to the court here what damages the plaintiff hath in that behalf sustained, it is commanded to the sheriff of the said county of — that he diligently inquire, by the oath of twelve honest and lawful men of his bailiwick, what damages the plaintiff hath sustained on occasion of the nonperformance of the said promises in the said declaration mentioned, and that he send the inquisition which he shall thereupon take to our said lady the queen [or in *C. P.* "to the justices," or in *Exch.* "to the barons"] at Westminster on —, under his seal and the seals of those by whose oath he shall take that inquisition, together with the writ of our lady the queen to him thereupon directed; the same day is given to the plaintiff and to the defendant at the same place: [then state the return to the inquiry as in a judgment by *nil dicit*, 328, 329; and then state the judgment thus:] Therefore it is considered that the plaintiff do recover against the defendant his damages aforesaid, by the said inquisition above found, and also — for his said costs and charges by the court here adjudged of increase to the plaintiff, and with his assent; which said damages, costs, and charges in the whole amount to £—— (a); to be levied of the goods and chattels which were of the said *E. F.* deceased at the time of his death, and which [if the plea were of bonds &c. outstanding, and *plene administravit præter*, here say, "after satisfying the monies due and owing on the said several judgments, indentures, and writings obligatory, in the said plea respectively mentioned"] shall hereafter come to the hands of the defendant as executor [or "administrator"] as aforesaid, to be administered; and the defendant in mercy, &c. [Add the marginal notes, as directed at the end of the form, ante, 102.]

[See 2 *Chit. Ar. Pr.* 878, 879, 880.]

3. *The like, in Debt.*

[Proceed as in the form, ante, 102, to the end of the plea of *plene administravit*, and then thus:] And hereupon, on —, the plaintiff, inasmuch as the defendant doth not deny the action of the plaintiff, [nor but that the said writing obligatory is the deed of the said *E. F.*] nor but that he the defendant detains from the plaintiff the said sum of £—— above demanded, in manner and form as the plaintiff hath above in that behalf alleged, and inasmuch as the plaintiff cannot deny but that the said defendant hath not nor had any goods or chattels which were of the said *E. F.* at the time of his death in his hands to be administered, in manner and form as the defendant hath above in his said plea in that behalf alleged, prays judgment and his said debt, together with his damages by him sustained, as well on occasion of the detaining thereof, as for his costs and charges by him about his suit in this behalf expended, to be adjudged to him, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the defendant to be administered: Therefore it is considered that the plaintiff do recover against the defendant, as executor [or "administrator"] as aforesaid, his said debt, and also £—— for his damages which he hath sustained, as well on occasion of the detaining thereof as for his costs and charges by him about his suit in this behalf expended (b), by the court here adjudged to the plaintiff, and with his

(a) The plaintiff is, it seems, entitled to these costs out of the future assets.

See 2 *Chit. Ar. Pr.* 881.

(b) See 2 *Chit. Ar. Pr.* 881.

assent, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the defendant, as executor [or “administrator”] as aforesaid, to be administered &c. [Add the marginal notes as directed at the end of the form, ante, 102.]

9. *Judgment of Assets acknowledged in Part, and for the Residue of Assets in futuro, on Plea of Plene Administravit præter, in Assumpsit.*

[Proceed as in the form, ante, 102, to the end of the plea, and then thus:] And hereupon, on —, the plaintiff, inasmuch as the defendant doth not deny the action of the plaintiff, nor but that the said *E. F.* in his lifetime did promise in manner and form as the plaintiff hath above in that behalf alleged, and inasmuch as the plaintiff cannot deny but that the defendant hath not any goods or chattels which were of the said *E. F.* at the time of his death in his hands to be administered, except the said goods and chattels to the value of £—— as aforesaid, prays judgment and his damages by him sustained, as well on occasion of the not performing of the said several promises in the said declaration mentioned, as for his costs and charges by him about his suit in this behalf expended, to be adjudged to him; to be levied as to £——, part thereof of the said goods and chattels so remaining in the hands of the defendant unadministered as aforesaid, and as to the residue thereof to be levied of other goods and chattels which were of the said *E. F.* at the time of his death, and which after final judgment (a) in this respect shall come to the hands of the defendant to be administered: Therefore it is considered that the plaintiff do recover against the defendant his damages by him sustained on occasion of the premises, to be levied in form aforesaid: But because it is unknown [&c. state the award of inquiry and return as directed in the form, ante, 512, No. 7, and then the final judgment, thus:] Therefore it is considered that the plaintiff do recover against the defendant, as executor [or “administrator”] as aforesaid, the said damages by the inquiry aforesaid above found, and also £—— for his said costs and charges by the court here adjudged of increase to the plaintiff and with his assent: which said damages, costs, and charges, in the whole amount to £——, to be levied as to the said £——, part thereof of the goods and chattels so remaining in the hands of the defendant unadministered as aforesaid, and as to the residue thereof to be levied of other goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter (a) come to the hands of the defendant as executor [or “administrator”] as aforesaid, to be administered &c. [Add the marginal notes as directed at the end of the form, ante, 102.]

10. *The like, in Debt.*

[Proceed as in the form, ante, 102, to the end of the plea, and then thus:] And hereupon on — the plaintiff, inasmuch as the defendant doth not deny the action of the plaintiff, nor but that [the writing obligatory aforesaid is the deed of the said *E. F.*] nor but that the defendant detains from the plaintiff the said sum of £—— above demanded, in manner and form as the plaintiff hath above in that behalf alleged; and inasmuch as the plaintiff cannot deny but that the defendant hath not any

(a) See the form, ante, 511, in which the judgment is stated to be upon assets after plea pleaded.

goods and chattels which were of the said *E. F.* at the time of his death in his hands to be administered, except the said goods and chattels to the value of £—— as aforesaid, prays judgment and his said debt, together with his damages by him sustained, as well on occasion of the detaining thereof as for his costs and charges by him about his suit in this behalf expended, to be adjudged to him; to be levied as to £——, part thereof of the said goods and chattels so as aforesaid acknowledged to be in the hands of the defendant to be administered, and as to the residue thereof to be levied of other goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter (a) come to the hands of the defendant to be administered: Therefore it is considered that the plaintiff do recover against the defendant as executor [or “administrator”] as aforesaid his said debt, and also £—— for his damages which he hath sustained, as well on occasion of the detaining thereof as for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff, and with his assent; to be levied as to the said £——, part thereof of the said goods and chattels so as aforesaid acknowledged to be in the hands of the defendant to be administered, and as to the residue thereof to be levied of other goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the defendant as executor [or “administrator”] as aforesaid to be administered &c. [Add the marginal notes as directed at the end of the form, ante, 102.]

11. *Judgment in Debt against three Executors, where one pleads Plene Administravit præter, another Plene Administravit generally, and the third lets Judgment go by Default.*

[Proceed as in the form, ante, 102, to the end of the declaration, and then, on a new line, proceed thus:] And on —— the said *C. D.* by *D. A.* his attorney, says, that he the said *C. D.* hath fully administered [&c. state the plea of plene administravit præter:] And on —— the said *E. F.* by —— his attorney says, that he the said *E. F.* hath fully administered [&c. state the plea of plene administravit generally:] And the said *G. H.* says nothing in bar or preclusion of the said action of the plaintiff by which the plaintiff remains therein undefended against the said *G. H.* And hereupon on —— the plaintiff, inasmuch as he cannot deny the several matters above pleaded by the said *C. D.* and *E. F.* respectively, but admits the same to be true, prays judgment and his debt aforesaid, together with his damages by him sustained as well on occasion of the detaining thereof as for his costs [&c. supra, No. 10,] to be adjudged to him: Therefore it is considered that the plaintiff do recover against the said *C. D.*, *E. F.* and *G. H.* as executors as aforesaid, his debt aforesaid, and also £—— for his damages which he hath sustained, as well on occasion of the detaining thereof as for his costs [&c. supra, No. 10] by the court here adjudged to the plaintiff, and with his assent; to be levied as to the said sum of £——, part thereof of the said goods and chattels so as aforesaid acknowledged to be in the hands of the said *C. D.* as executor as aforesaid to be administered, or of the goods and chattels which were of the said *J. K.* deceased, at the time of his death, and which shall hereafter (a) come to the hands of the said *E. F.* as executor as aforesaid to be administered, or which are now in or shall hereafter come to the hands of

(a) See the form, ante, 511, in which the judgment is stated to be upon assets after plea pleaded.

the said *G. H.* as executor as aforesaid to be administered; and as to the residue thereof to be levied of the goods and chattels which were of the said *J. K.* deceased, at the time of his death, and which shall hereafter come to the hands of the said *C. D.* and *E. F.* as executor as aforesaid, or either of them, or which are now in or shall hereafter come to the hands of the said *G. H.* as executor as aforesaid to be administered: It is also considered by the court here that the plaintiff do recover against the said *G. H.* executor as aforesaid, the sum of £—— for his costs and charges by him about his suit in this behalf expended, by the court here adjudged to the plaintiff, and with his assent, to be levied of the goods and chattels which were of the said *J. K.* deceased, at the time of his death in the hands of the said *G. H.* as executor as aforesaid to be administered, if he hath so much thereof in his hands to be administered, and if he hath not so much in his hands thereof to be administered, to be levied of the proper goods and chattels of the said *G. H.*; and the said *G. H.* in mercy &c. [*Make the marginal notes as directed at the end of the form, ante, 102. See a form in assumpsit, Tidd's Forms, 189.*]

12. *Issue.—Jury Process.—Nisi Prius Record.*

[*Same as in ordinary cases, mutatis mutandis.*]

13. *Issue, where only Plene administravit or a Plea admitting the Cause of Action is pleaded.*

[*Proceed as in the form of issue, as in ordinary cases, ante, 43, to the end of the similiter, and then thus:*] And inasmuch as the defendant doth not in or by the aforesaid plea deny the aforesaid action of the plaintiff, nor but that the said *E. F.* did promise in manner and form as the plaintiff hath in his said declaration alleged, nor but that the plaintiff ought to recover his damages occasioned by the non-performance of those promises, the plaintiff prays judgment and his damages by him sustained on occasion of the not performing of the said promises to be adjudged to him, to be levied of the goods and chattels which were of the said *E. F.* deceased, at the time of his death. But because it is not known what damages the plaintiff hath sustained on occasion of the non-performance of the several promises aforesaid; and because it is also unknown at present whether the defendant will or will not be convicted of the premises above put in issue between the plaintiff and defendant to be tried by the country, and because until the aforesaid issue is tried final judgment herein cannot be given; therefore let the giving of judgment herein be stayed until the issue above joined is determined; and as well to try the said issue above joined as to inquire what damages the plaintiff hath sustained by reason of the premises aforesaid, the sheriff is commanded that he cause to come here on —, twelve &c., by whom &c., and who neither &c., to recognize &c., because as well &c.

14. *Issue, where the General Issue or another Plea denying the Cause of Action is pleaded with the Plea of Plene administravit; and the Plaintiff takes a Judgment of Assets Quando acciderint on the latter.*

[*Proceed as in the form of the issue in ordinary cases, ante, 43, to the end of the defendant's plea, and then thus:*] And on — the plaintiff, as to the said plea of the defendant by him above pleaded, and whereof he hath

put himself upon the country, doth the like. And as to the said plea of the defendant by him lastly above pleaded, the plaintiff, inasmuch as he cannot deny the said several allegations of the defendant in his said last plea, prays judgment and his damages by him sustained, on occasion of the not performing of the said several promises in the said declaration mentioned, to be adjudged to him, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which since the pleading of the said second plea of the defendant have come, or which shall hereafter come to the hands of the defendant as executor [or "administrator"] as aforesaid to be administered [or if the plea were of bonds &c. outstanding, and plene administravit prater, here add these words: "after satisfying the monies due and owing on the said several judgments and writings obligatory in the said last plea mentioned"], but because it is uncertain whether the defendant will be convicted upon the said issue above joined between the parties aforesaid, therefore let judgment be thereupon stayed until the trial and determination of the said issue; and in order to try the said issue let a jury come [&c. conclude as in the preceding form.]

[See 2 Chit. Ar. Pr. 879.]

15. *Postea, on Verdict for Plaintiff on Non-assumpsit.*

[Proceed as in the form, ante, 89, No. 1, to the asterisk*, and then thus:] say upon their oath, that the within-named *E. F.* in his life-time did promise in manner and form as the plaintiff hath within in that behalf alleged; and they assess the damages of the plaintiff on occasion of the not performing the promises within-mentioned, over and above his costs and charges by him about his suit in that behalf expended, to £——, and for those costs and charges to 40s. Therefore &c.

16. *The like, on Plene administravit.*

[Proceed as in the form, ante, 89, No. 1, to the asterisk*, and then thus:] say upon their oath, that the defendant, on the day of suing out the writ of the plaintiff in this behalf, had divers goods and chattels which were of the within-named *E. F.* at the time of his death, in the hands of the defendant, as executor of the last will and testament of the said *E. F.* [or "as administrator of the goods, chattels and effects which were of the said *E. F.* at the time of his death, who died intestate,"] to be administered, to the value of £——, as the plaintiff hath within in that behalf alleged; and they assess the damages [&c. conclude as in the preceding form.]

17. *Postea, on Verdict for Defendant on Non-assumpsit.*

[Proceed as in the form, ante, 89, No. 1, to the asterisk*, and then thus:] say upon their oath, that the within-named *E. F.* in his life-time did not promise in manner and form as the plaintiff hath within in that behalf alleged. Therefore &c.

18. *The like, on Plene administravit.*

[Proceed as in the form, ante, 89, No. 1, to the asterisk*, and then thus:] say upon their oath, that the defendant, on the day of suing out

the writ of the plaintiff in this behalf, had not any goods or chattels which were of the within-named *E. F.* at the time of his death, in the hands of the defendant, as executor of the last will and testament of the said *E. F.* [or "as administrator of the goods, chattels, and effects which were of the said *E. F.* at the time of the death, who died intestate,"] to be administered as the defendant hath within in pleading alleged. Therefore &c.

19. *Judgment for Plaintiff on a Verdict in Assumpsit against an Executor or Administrator.*

[*Proceed as in the form, ante, 102, to the end of the postea, and then thus:*] Therefore it is considered that the plaintiff do recover against the defendant as executor [or "administrator"] as aforesaid, his damages aforesaid, by the said jury in form aforesaid assessed, and also £—— for his said costs and charges by the court here adjudged of increase to the plaintiff and with his assent; which said damages, costs, and charges in the whole amount to £——: to be levied of the goods and chattels which were of the said *E. F.* at the time of his death in the hands of the defendant as executor [or "administrator"] as aforesaid to be administered, if he hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then [the sum of £——, parcel of the damages aforesaid, being for the costs and charges aforesaid (a)], to be levied of the proper goods and chattels of the said defendant; and the defendant in mercy &c. [*Add the usual marginal notes as directed at the end of the form, ante, 102.*]

[*See 2 Chit. Ar. Pr. 880.*]

20. *Judgment for Plaintiff on Verdict in Debt against an Executor or Administrator, where the Jury find Assets to Amount of Part of Debt.*

[*Proceed as in the form, ante, 102, to the end of the postea, and then thus:*] Therefore it is considered that the plaintiff do recover against the defendant as executor [or "administrator"] as aforesaid, his said debt, and also his damages aforesaid, by the said jury in form aforesaid assessed, and likewise £—— for his said costs and charges by the court here adjudged of increase to the plaintiff and with his assent; to be levied, as to the sum of £——, parcel of the said debt, being the value of the said goods and chattels of the said *E. F.* so found by the said jury to be in the hands of the defendant to be administered, and also to the said £—— for the damages, costs, and charges aforesaid, of the goods and chattels which were of the said *E. F.* at the time of his death, in the hands of the defendant to be administered, if he hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then [the said £—— for the damages, costs, and charges aforesaid, (a)] to be levied of the proper goods and chattels of the defendant; and as to the residue of the said debt, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which

(a) If the defendant has pleaded a plea false within his own knowledge, as ne unques executor or administrator, or a release to himself, or the like, then the judgment may be against him

both for debt and costs si, &c. et si non de bonis propriis, or perhaps unconditionally de bonis propriis, see 2 Chit. Ar. Pr. 881, and these words should in such a judgment be omitted.

shall hereafter (a) come to the hands of the defendant to be administered; and the defendant in mercy &c. [*Add the usual marginal notes as directed at the end of the form, ante, 102.*]

21. *Fi. Fa. on a Judgment against Executor or Administrator de Bonis Testatoris, and Et si non for Costs against him de Bonis Propriis*(b).

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting(c): We command you, that you cause to be made of the goods and chattels in your bailiwick, which were of *E. F.* deceased, at the time of his death, in the hands of *C. D.* executor of the last will and testament of the said *E. F.* deceased, [or “administrator of all and singular the goods and chattels, rights and credits which were of the said *E. F.* deceased, at the time of his death, who died intestate,”] to be administered, as well a certain debt of £——, which *A. B.* hath recovered against the said *C. D.* as executor [or “administrator”] as aforesaid, in our court before us, [or in *C. P.* “before our justices,” or in *Exch.* “before the barons of our Exchequer,”] at Westminster, as also £——, which in our same court were awarded to the said *A. B.* for his damages which he sustained, as well by reason of detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, [or if in *assumpsit*, then, “the sum of £——, which in our court before us,” (or in *C. P.* “before our justices,” or in *Exch.* “before the barons of our Exchequer,”) at Westminster, were awarded to *A. B.* for his damages which he sustained as well by reason of not performing certain promises made by the said *E. F.* in his lifetime to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended,] whereof the said *C. D.* is convicted, as appears to us of record, [or in *C. P.* omit the words, “as appears to us of record,” or in *Exch.* say “as by inspecting the rolls of our said Exchequer appears to us:”] together with interest upon the said several sums of £—— and £—— at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up, [or if entered up before the 1st October, 1838, say “from the 1st day of October, A. D. 1838,” and omit the words “on which day the judgment aforesaid was entered up,”] if the said *E. F.* hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then that you cause to be levied of the proper goods and chattels of the said *C. D.* in your bailiwick the sum of £——, for the costs and charges aforesaid; and have you that money, [*conclude as usual, see forms, ante, 148, &c.*]

[*See 2 Chit. Ar. Pr. 882.*]

22. *Return thereto of Nulla Bona Testatoris, nec propria.*

The within-named *C. D.* has no goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other

(a) See the forms, *ante*, 511, 515, in which the judgment is stated to be of assets which shall come to hand after plea pleaded.

(b) If the judgment be against the defendant both for debt and costs si,

&c. et si non, &c. then a *fi. fa.* may from this form be readily adapted to meet it.

(c) As to the directions of writs, see *ante*, 20, n. (a).

securities for money which were of the within-named *E. F.* at the time of his death in his hands to be administered, in my bailiwick, which I can seize or take, or pay or deliver to the within-named *A. B.* or whereof I can cause to be made the damages [*or in debt*, "debt and damages"] and interest within-mentioned or any part thereof; and he has not any of his own proper goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money in my bailiwick, which I can seize or take, or pay or deliver to the within-named *A. B.* or whereof I can cause to be made the within-mentioned sum of £——, parcel &c. [*or in debt*, "the damages, costs, and charges aforesaid"], and interest aforesaid, or any part thereof, according to the exigency of this writ.

The answer of S. S. sheriff.

[*See 2 Chit. Ar. Pr. 882.*]

23. *The like, with a Devastavit.*

The within-named *C. D.* has no goods or chattels [*&c. as in preceding form to the end,*] but divers goods and chattels, which were of the said *E. F.* at the time of his death, to the value of the damages [*or in debt*, "debt and damages"] and interest within-mentioned, after the death of the said *E. F.* came to the hands of the said *C. D.* to be administered; which said goods and chattels the said *C. D.* hath, before the coming of this writ to me directed, eloiigned, wasted, and converted to his own use.

The answer of S. S. sheriff.

[*See 2 Chit. Ar. Pr. 882.*]

24. *Entry of a Devastavit upon Roll, and Award of Fi. fa. or Ca. sa.*

[*Enter an award of the above fi. fa., as ante, 175, mutatis mutandis, and the sheriff's above return, as ante, 175, mutatis mutandis, and then thus:*] wherefore it is considered that the said *A. B.* have execution against the said *C. D.* of the damage [*or in debt*, say "debt and damages"] aforesaid; and afterwards, that is to say, on the —— day of ——, the plaintiff comes here into court by his attorney aforesaid, and prays the writ of the said lady the queen of fieri facias to be directed to the said sheriff, commanding him that he cause to be made of the proper goods and chattels in his bailiwick of the said *C. D.* the damages [*or* "debt and damages"] aforesaid; and it is directed to him returnable before our lady the queen [*or in C. P.* "before the justices of our lady the queen," *or in Exch.* "before the barons of her majesty's Exchequer"] at Westminster, immediately after the execution thereof &c.

[*If the writ awarded be a ca. sa. the form may be readily adapted to meet it by referring to the entry, ante, 200.*]

[*See 2 Chit. Ar. Pr. 883.*]

25. *Fieri facias thereon.*

Victoria, [*&c. as ante, 518, No. 21,*] to the sheriff of ——, greeting: Whereas we lately commanded you, that of the goods and chattels which were of *E. F.* deceased, at the time of his death, in the hands of *C. D.* executor of the last will and testament of the said *E. F.* [*or* "administrator of all and singular the goods, chattels, and credits, which were of the said *E. F.* at the time of his death, who died intestate,"] to be adminis-

tered, in your bailiwick, you should cause to be made [*&c. recite the fieri facias de bonis testatoris, &c., see ante, 518, No. 21*], and you afterwards, on the — day of —, A.D. —, returned to us [*or in C. P. "to our said justices," or in Exch. "to the barons of our said Exchequer"*] at Westminster aforesaid, that the said C. D. had no goods or chattels, [*&c. recite the sheriff's return of nulla bona and devastavit*]; therefore we command you*, that of the proper goods and chattels of the said C. D. in your bailiwick, you cause to be made the said £——, [*&c. conclude as in the ordinary forms, ante, 148, &c.*]

[*See 2 Chit. Ar. Pr. 882.*]

26. *Ca. sa. thereon.*

[*Same as in the preceding form, to the*, and then thus:*] that you take the said C. D. if [*&c. as in the ordinary forms, ante, 190, to the words*] to satisfy the said A. B. his damages, [*or if in debt, "debt and damages"*] and interest aforesaid; and have you there [*&c. conclude as usual, see the forms, ante, 190, &c.*]

27. *Scire facias on a Judgment of Assets quando acciderint.*

Victoria, [*&c. as ante, 518, No. 21,*] to the sheriff of —, greeting: Whereas A. B. lately in our court before us [*or in C. P. say "before our justices of the bench," or in Exch. "before the barons of our Exchequer"*] at Westminster, by the judgment of the same court, recovered against C. D. executor of the last will and testament of E. F. deceased [*or "administrator of all and singular the goods, chattels, and credits, which were of E. F. deceased at the time of his death, who died intestate"*], £—— &c. for his damages which [*&c. see ante, 148, No. 1, 152, &c. if in assumpsit &c., or if in debt, say "as well a certain debt of £——" &c. see ante, 150, No. 3,*] to be levied of the goods and chattels which were of the said E. F. at the time of his death, and which should thereafter come to the hands of the said C. D. as executor [*or "administrator"*] as aforesaid to be administered; whereof the said C. D. is convicted, as appears to us of record [*or in C. P. omit the words "as appears to us of record," or in Exch. say "as by inspecting the rolls of our said exchequer appears to us."*] And although judgment be thereupon given, yet execution of the damages [*or "debt and damages"*] aforesaid still remains to be made to him. And after the judgment aforesaid, in form aforesaid given, divers goods and chattels which were of the said E. F. at the time of his death, to the value of the damages [*or "debt and damages"*] and interest aforesaid, and more, came to and are now in the hands and possession of the said C. D. as executor [*or "administrator"*] as aforesaid, to be administered, whereof he may satisfy the said A. B. for the damages [*or "debt and damages"*] and interest aforesaid, as by the information of the said A. B. in our said court we have been given to understand; wherefore the said A. B. hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, command you, that by honest and lawful men of your bailiwick you make known to the said C. D. [*or if in C. P. or Exch. see the form, ante, 458, No. 5,*] that he be before us [*or in C. P. "before our said justices," or in Exch. "before the said barons"*] at Westminster, on —, to show if he hath or knoweth of any thing to say for himself why the said A. B. ought not to have execution against him for the

damages [*or* "debt and damages"] and interest aforesaid, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which so as aforesaid came to and are now in the hands of the said *C. D.* to be administered, if it shall seem expedient for him; and further to do and receive [*&c. conclude as in form, ante, 458, No. 5.*]

[*See 2 Chit. Ar. Pr. 827.*]

28. *Scire fieri inquiry in Q. B. after a return of Nulla bona testatoris.*

Victoria, [*&c. as ante, 518, No. 21,*] to the sheriff of —, greeting : Whereas by our writ we lately commanded you, that of the goods and chattels in your bailiwick, which were of *F. F.* deceased at the time of his death in the hands and possession of *C. D.* as executor of the last will and testament of the said *E. F.* [*or* "administrator of all and singular the goods, chattels, and credits, which were of the said *E. F.* at the time of his death, who died intestate, as it is said,"] to be administered, you should cause to be made [*&c. proceed as in the writ of fieri facias to the teste*]. And you, on the — day of —, A. D. —, returned to us [*or in C. P. "to our justices," or in Exch. "to our barons"*] at Westminster, that the said *C. D.* had no goods or chattels [*&c. proceed as in the return of nulla bona to the end*]. And because the return aforesaid by you made in our said court, seems to be in delay of execution of the [debt and] damages and interest aforesaid; and because, on the behalf of the said *A. B.* in our said court it is sufficiently testified that divers goods and chattels, which were of the said *E. F.* at the time of his death, to the value of the [debt and] damages and interest aforesaid, after the death of the said *E. F.* came to the hands and possession of the said *C. D.* to be administered, and that the said *C. D.* hath sold and wasted those goods and chattels, and converted and disposed of the money arising therefrom to his own use; and that the said *C. D.* hath eligned the residue of the goods and chattels which were of the said *E. F.* at the time of his death, to places to the said *A. B.* unknown, and hath converted and disposed of the said last-mentioned goods and chattels to his own use, with intent that execution thereof should not as yet be made: And because we are unwilling that those things which in our said court are rightly done or adjudged should be rendered ineffectual by fraud or subtilty, therefore we command you, that of the goods and chattels in your bailiwick, which were of the said *E. F.* at the time of his death, in the hands of the said *C. D.* to be administered, you cause to be made the [debt and] damages aforesaid, together with such interest as aforesaid, if they can be levied thereof; and have the money thereof levied before us [*or if in C. P. "before our justices," or if in Exch. "before the barons of our Exchequer"*] at Westminster, on —, [*or "immediately after the execution hereof,"*] to be rendered to the said *A. B.* for his [debt and] damages and interest aforesaid; and if they cannot be thereof levied, then if it shall appear to you, by the inquisition upon oath of honest and lawful men of your bailiwick, in this behalf to be taken, or in any other manner by which you may the better know, that the said *C. D.* hath sold, eligned, wasted, or converted or disposed of to his own use, the goods or chattels which were of the said *E. F.* at the time of his death, in the hands of the said *C. D.* to be administered, to the value of the [debt and] damages aforesaid, and such interest as aforesaid, or any part thereof, that then, by honest and lawful men of your bailiwick, you make known to the said *C. D.* that he be before us [*or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer"*] at Westminster, on —, to show if he has or knows of any thing to say for himself why the said *A. B.* ought not to have his exe-

cution against him of the [debt and] damages aforesaid, and such interest as aforesaid, to be levied of the proper goods and chattels of the said C. D. if it shall seem expedient for him; and further to do and receive [&c. *conclude as ante*, 458, No. 5.]

[*See 2 Chit. Ar. Pr.* 882.]

29. *Return thereto, of a Devastavit and Nil, &c.*

The within-named E. F. has no goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, which were of the within-named C. D. deceased at the time of his death, in the hands of the said E. F. to be administered, in my bailiwick, which I can seize or take, or pay or deliver to the within-named A. B., or whereof I can cause to be made the damages [or "debt and damages"] and interest within-mentioned, or any part thereof; but the said E. F. after the death of the said C. D. had divers goods and chattels, which were of the said C. D. at the time of his death, in his hands to be administered, to the value of the damages [or "debt and damages"] and interest within-mentioned; which said goods and chattels the said E. F. afterwards, and before the coming of this writ to me, sold, wasted, elogned, and converted to his own use, as appears by a certain inquisition taken before me in this behalf, on the oath of honest and lawful men of my said bailiwick, and to this writ annexed: And I further certify, that the said E. F. hath nothing in my bailiwick where or by which I can make known to him, as by the said writ I am commanded, nor is he found in the same. The residue of the execution of this writ appears in a certain inquisition hereunto annexed.

The answer of S. S. sheriff.

30. *Inquisition thereon.*

An inquisition indented, taken at —, in the county of —, on the — day of —, in the year of our Lord —, before S. S. sheriff of the county aforesaid, by virtue of a writ of our lady the queen, directed to the said sheriff, and to this inquisition annexed, to inquire of and upon certain matters in the said writ contained and specified, by the oath of J. B., [&c. *names of jurors*], honest and lawful men of the bailiwick of the said sheriff, who upon their oath aforesaid say, that E. F. in the said writ named, after the death of the said C. D. in the said writ also named, had divers goods and chattels, which were of the said C. D. at the time of his death, in the hands of the said E. F. to be administered to the value of the damages [or "debt and damages"] and interest in the said writ specified; which said goods and chattels the said E. F. hath sold, wasted, elogned, and converted to his own use. In witness whereof, as well the said sheriff as the jurors aforesaid, have caused their seals to be affixed to this inquisition the day and year above-mentioned.

[*See 2 Chit. Ar. Pr.* 882.]

31. *Scire Facias against an Executor or Administrator upon a Judgment against Testator or Intestate.*

[*See the forms, ante*, 476, 477, 487, &c.]

CHAPTER VI.

ACTIONS AGAINST HEIRS AND DEVISEES ON BOND &c.
OF ANCESTOR.1. *Proceedings until Judgment.*

[The practical forms are the same as in ordinary cases *mutatis mutandis*.]

[See 2 Chit. Ar. Pr. 884.]

2. *Judgment on a Verdict against an Heir on the Bond of his Ancestor.*

[Proceed as in the form, ante, 102, to the end of the *postea*, and then state the judgment thus:] Therefore it is considered that the plaintiff do recover against the defendant his said debt and his damages aforesaid to £—— by the said jury in form aforesaid assessed, and also £——, for his costs and charges aforesaid by the court here adjudged of increase to the plaintiff and with his assent, to be levied of the lands and tenements which were of the said *E. F.* in fee simple at the time of his death, and which came to and are now in the hands of the defendant by hereditary descent from the said *E. F.*: And the defendant in mercy &c. [Add the usual marginal notes, as directed at the end of the form, ante, 102.]

[See 2 Chit. Ar. Pr. 886.]

3. *Extent against an Heir upon a Special Judgment against him (a).*

Victoria, [&c. as ante, 518, No. 21,] to the sheriff of ——, greeting: Whereas *A. B.* lately in our court before us [or in *C. P.* “in our court before our justices,” or in *Exch.* “before the barons of our Exchequer”] at Westminster, by the consideration and judgment of the same court, recovered against *C. D.*, son and heir of *E. F.* deceased, a certain debt of £——, and also £—— which in our said court were adjudged to the said *A. B.* for his damages which he had sustained, as well by reason of the detention of the said debt as for his costs and charges by him about his suit in that behalf expended, to be levied of the lands and tenements which were of the said *E. F.* in fee simple at the time of his death in the hands of the said *C. D.*; whereof the said *C. D.* is convicted, as appears to us of record [or in *C. P.* omit the words “as appears to us of record,” or in *Exchequer*, say “as by inspecting the rolls of our said Exchequer appears to us.”] Therefore we command you, that by the oath of honest and lawful men of your bailiwick you diligently inquire of what lands and tenements the said *E. F.* was seised in fee simple at the time of his death, and which descended to the said *C. D.* as son and heir of the said *E. F.* by hereditary right after the death of the said *E. F.* and of which the said *C. D.* on the —— day of ——, in the —— year of our reign, on which day the said *A. B.* sued out his writ for the debt aforesaid against

(a) See a form, Tidd's Forms, 440.

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the said *C. D.*, was seised in his demesne as of fee, and how much those lands and tenements, with the appurtenances, are worth by the year, in all issues beyond reprises, according to the true value of the same; and when the said inquisition shall have been by you so made, that without delay you deliver the said lands and tenements, with the appurtenances, to the said *A. B.* to hold to him and his assigns as his freehold, until the debt and damages aforesaid shall be thereof fully levied: And in what manner you shall have executed this our writ make appear to us [or in *C. P.* "to our justices," or in *Exch.* "to our barons"] at Westminster, immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there the names of those by whose oath you shall make the said extent and appraisement, and this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 887.]

4. *The like, on a general Judgment.*

Victoria, [&c. as ante, 518, No. 21,] to the sheriff of —, greeting: Whereas *A. B.* lately in our court [&c. as in preceding form] recovered against *C. D.* son and heir of *E. F.* deceased, a certain debt of £—, and also £—, which in our said court were adjudged to the said *A. B.* for his damages [&c. as in preceding form], whereof, [&c. as in preceding form]: And afterwards the said *A. B.* came into our said court and prayed to be delivered to him all the lands and tenements of the said *C. D.* in your county, which descended to the said *C. D.* from the said *E. F.* his father, in fee simple, whereof the said *C. D.* on the — day of —, in the — year of our reign, on which day the said *A. B.* sued out his writ against him for the debt aforesaid, was seised: But because it is unknown what lands and tenements the said *C. D.* on the aforesaid day of suing out the writ aforesaid, had by hereditary descent from the said *E. F.* his father, we command you, that by the oath of honest and lawful men of your bailiwick you diligently inquire what lands and tenements the said *C. D.*, on the same day of suing out the writ aforesaid, had by hereditary descent from the said *E. F.* his father, and how much those lands and tenements are worth by the year, according to the true value of the same, in all issues beyond reprises: and when the said inquisition shall have been by you diligently made, that without delay you deliver to the said *A. B.* the said lands and tenements, with the appurtenances, according to the true value of the same; to hold to the said *A. B.* and his assigns as his freehold, until the debt and damages aforesaid shall be thereof fully levied: And in what manner you shall have executed this our writ make appear [&c. conclude as in the preceding form.]

[See 2 Chit. Ar. Pr. 887.]

5. *Scire Facias against Heirs and Terretenants, on Judgment against Ancestor.*

[See forms of, ante, 477 to 482.]

6. *Scire Facias on a Judgment of Assets Quando, &c.*

[See a form, ante, 520.]

CHAPTER VII.

ACTIONS BY AND AGAINST INFANTS.

1. *Process.*

[*The same as in ordinary cases. If the infant be the plaintiff, the process will be in his name, and not in the name of the guardian or prochein amy. See 2 Chit. Ar. Pr. 889.*]

2. *Petition to sue by Prochein Amy.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

To the Right Honourable ——— (*name of chief justice*), lord chief justice of her majesty's court of Queen's Bench, [*or if in C. P. "Sir ——— (name of chief justice), knight, lord chief justice of her majesty's court of the Bench," or if in Exch. "To ——— (name of chief baron), lord chief baron of her majesty's court of Exchequer"*] at Westminster, and the rest of the barons of the said court."]

The humble petition of *A. B.* the plaintiff in this suit, an infant under the age of twenty-one years,

Sheweth,

That your petitioner has, as he is advised, a good cause of action against the said *C. D.* for the price and value of work done, and materials for the same provided by your petitioner, for the said *C. D.* and at his request [*as the cause of action may be, describing it as in an affidavit to hold to bail; see forms, ante, 212 to 227*]; and that your petitioner has lately commenced an action against the said *C. D.* in this honourable court for the same: But in regard to your petitioner being an infant under the age of twenty-one years, to wit, of the age of ——— years;

Your petitioner therefore humbly prays your lordship, [*or in Exch. "your honours"*] to admit him to prosecute the said action by *N. F.* of ———, tailor, your petitioner's next friend. And your petitioner will ever pray.

Witness *W. W.*

A. B.

[*See 2 Chit. Ar. Pr. 890.*]

3. *Prochein Amy's Consent thereto.*

I hereby consent and agree that the above-named *A. B.* shall be at liberty to prosecute this action by me, as his next friend, according to the prayer of the above petition.

Witness *W. W.*

N. F.

[*See 2 Chit. Ar. Pr. 890.*]

4. *Affidavit of Signature to Petition and Consent.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

W. W. clerk to *P. A.* of — gentleman, attorney for the above-named plaintiff, maketh oath and saith, that *A. B.*, the above-named plaintiff, did on —, the — day of — instant [or "last"], duly sign the petition hereunto annexed, in the presence of this deponent: And this deponent further saith, that at the same time he was present and did see *N. F.*, the person mentioned in the prayer of the said petition, duly sign the consent or agreement thereunder written, as the next friend of the said *A. B.*

Sworn [&c. *see ante*, 207.]*W. W.*5. *Judge's Order for a Rule thereon.*

B. } Upon reading the petition of *A. B.*; the consent of *N. F.*
 against } thereunder written, and the affidavit of *W. W.*, I do order that
D. } the masters do draw up a rule that *N. F.* be admitted to prosecute for *A. B.* (who is an infant under the age of twenty-one years) against *C. D.* a certain action upon promises [or "of debt," as the action may be], in the court of Queen's Bench [or "Common Pleas," or "Exchequer of Pleas"], as the next friend of the said *C. D.* during his minority. Dated the — day of —, 1840.

[*Judge's signature.*][*See 2 Chit. Ar. Pr.* 890.]6. *Rule of Court thereon in Q. B. or C. P.*

On — the — day of —, A. D. 18—.

A. B. } It is ordered by the court, that *N. F.* be admitted to prosecute for *A. B.* (who is under the age of twenty-one years)
 v. }
C. D. } against *C. D.* a certain action on promises [or as the action may be], in the court of Queen's Bench [or "Common Pleas"], as the next friend of the said *A. B.* during his minority.

By the Court.

[*See 2 Chit. Ar. Pr.* 890.]7. *The like, in Exchequer.*

A. B. } *N. F.* of — is admitted to prosecute for *A. B.* (who is an
 v. } infant under the age of twenty-one years) this action in the
C. D. } court of Exchequer against *C. D.* as the next friend of the said *A. B.* during his minority.

Admitted the — day of —, 1840.

[*Baron's signature.*]8. *Petition to defend by Guardian.*[*Commence the same as the petition, ante*, 525, No. 2.]

Sheweth,

That the above-named plaintiff hath lately commenced an action at law in this honourable court against your petitioner, for [state the cause of action concisely as you would in an affidavit to hold to bail; *see ante*, 212 to 227] and your petitioner is advised and believes that he has a good defence

to make thereto: But in regard that your petitioner is an infant under the age of twenty-one years, to wit, of the age of — years:

Your petitioner therefore humbly prays your lordship [*or in Exch. "your honours"*] that you would assign to him *G. G.* of — tailor, as his guardian, to defend the said suit. And your petitioner will ever pray.
C. D.

[*See 2 Chit. Ar. Pr. 893.*]

9. *Consent of Guardian thereto:*

I do hereby consent and agree that the above-named *C. D.* shall be at liberty to defend this action by me as his guardian, according to the prayer of the above petition. Witness my hand this — day of —, 1840.

Witness *W. W.*

G. G.

10. *Affidavit of Signature to such Petition and Consent.*

[*Same as ante, 526, No. 4.*]

11. *Judge's Order for a Rule thereon.*

[*Same as ante, 526, No. 5, mutatis mutandis.*]

12. *Rule of Court thereon.*

On the — day of —, A. D. —.

A. B. } It is ordered by the court that *G. G.* be admitted to defend
v. } for *C. D.*, who is under the age of twenty-one years, at the
C. D. } suit of *A. B.*, a certain action upon promises [*as the action may be*] in the court of Queen's Bench [*or "Common Pleas," or "Exchequer of Pleas"*], as the guardian of the said *C. D.* during his minority.

By the Court.

13. *General Admission to prosecute and defend, &c.*

On — the — day of —, A. D. —.

N. F. of — is admitted to prosecute and defend for *A. B.*, who is under the age of twenty-one years, all and all manner of actions, suits, and controversies whatsoever, in the court of Queen's Bench [*or "Common Pleas," or "Exch. of Pleas"*], as the next friend and guardian of the said *A. B.* during his minority. Admitted the — day of —, 1840.

[*Judge's signature.*]

[*See 2 Chit. Ar. Pr. 889, 892.*]

14. *Declaration by an Infant.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

On — the — day of —, A. D. —.

— (to wit.) *A. B.* by *N. F.*, who is admitted by the court of our lady the queen before the queen herself [*or in C. P. "by the justices," or in Exch. "by the barons"*] here, as the next friend of the said *A. B.*, who is an infant under the age of twenty-one years, to prosecute for the said *A. B.* in this behalf, complains [*&c. proceed as in ordinary cases; see the forms, ante, 25, &c.*]

15. *Plea by Infant.*

[*See the form, ante, 41, No. 19.*]

16. *Security for Costs.*

[*See forms as to, in ejectment, ante, 376.*]

17. *The other forms of proceedings are the same as in ordinary cases.*

[*See 2 Chit. Ar. Pr. 893, 894.*]

CHAPTER VIII.

ACTIONS BY AND AGAINST BARON AND FEME.

Affidavits to hold to Bail, ante, 18.

Writ of Error, ante, 143.

Scire Facias, ante, 493.

The other proceedings are the same as in ordinary cases.

[*See 2 Chit. Ar. Pr. 895, 896.*]

CHAPTER IX.

ACTIONS BY AND AGAINST THE ASSIGNEES OF A BANKRUPT.

1. Affidavit to hold to bail by Assignees.

[See the form, ante, 18. See 1 Chit. Ar. Pr. 487; 2 id. 900.]

2. Process.

[The same as in ordinary cases, but describe the plaintiffs, when suing as assignees, thus:] "A. B. and C. D. assignees of the estate and effects of B.B. a bankrupt, according to the statutes in force concerning bankrupts."

[See 2 *Chit. Ar. Pr.* 900; 1 *id.* 513.]

3. Declaration by Assignees.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On — the — day of —, A. D. —.

— (to wit.) *A. B. and C. D.* assignees of the estate and effects of *B. B.* a bankrupt, according to the statutes in force concerning bankrupts, by *P. A.* their attorney, complain of *C. D.* [*&c. the rest of the commencement of the declaration is as usual.*] See ante, 25, 26.

4. Notice of Defendant's intention to dispute Petitioning Creditor's Debt, &c. on stat 6 Geo. 4, c. 16, s. 90.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. and E. F. suing as assignees of B. B. (an alleged bankrupt,) against C. D.

You are hereby required, according to the form of the statute in such case made and provided, to take notice that the defendant in the above cause intends, at the trial thereof, to resist and dispute the validity of the fiat of bankruptcy issued against the said *B. B.* in the pleadings in this cause mentioned, and also the trading and act of bankruptcy on which the said fiat is supposed to be founded, and the petitioning creditor's supposed debt, in respect whereof the said fiat hath been issued (*a*); as well as the right and title of the plaintiffs to support this action, as assignees under that fiat, against the present defendant: And I do hereby give you notice, that you will be and are hereby required to prove, on the trial of the said cause, and that the said defendant will then insist upon your proving the trading of the said *B. B.*, the act of bankruptcy upon which the said fiat is supposed to be founded, the time when and place where it was committed, and the petitioning creditor's debt. And further, that you do produce upon the said trial the said fiat, and all examinations,

(a) The notice should be confined to the fact which the defendant intends to dispute

depositions, and proceedings whatsoever had or taken under the same.
Dated the — day of —, 1840.

To *A. B.* and *E. F.* the above-Your's &c. *D. A.*
named plaintiffs, and Mr. Defendant's attorney [or "agent."]
P. A. their attorney, [or "agent."]
[See 2 Chit. Ar. Pr. 901.]

5. *Scire facias by Assignees, to make themselves Parties to a Judgment obtained by the Bankrupt.*

[See the form, ante, 495.]

6. *Notice of Plaintiff's intention to dispute Bankruptcy, &c.*
In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff,
against
C. D. defendant.

Take notice, that the above-named plaintiff intends, on the trial of this cause, to dispute the petitioning creditor's debt, and the trading and act of bankruptcy of *B. B.* under the fiat of bankruptcy mentioned in the pleadings in this cause [or if they are not mentioned in the pleadings, "under a certain fiat of bankruptcy lately issued against the said *B. B.*, and under which fiat the above named defendants have been chosen assignees."]

Dated the — day of —, 1840.Your's &c. *P. A.*
To *G. D.* and *G. H.* the above-Plaintiff's attorney [or "agent."]
named defendants, and to Mr.
D. A. their attorney, [or "agent."]
[See 2 Chit. Ar. Pr. 903.]

CHAPTER X.

ACTIONS BY AND AGAINST IDIOTS AND LUNATICS.

[See 2 Chit. Ar. Pr. 909.]

CHAPTER XI.

ACTIONS AGAINST MAGISTRATES, CONSTABLES, OFFICERS OF EXCISE, OR CUSTOMS.

1. *Notice of Action to a Justice by the Attorney of the Party injured (a).*

To *C. D.* esquire, one of her majesty's justices of the peace in and for the county of —.

Sir,

I do hereby, as the attorney [*or "agent"*] of and for *Abel Brown* of —, according to the form of the statute in such case made and provided, give you notice, that the said *A. B.* will, at or soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons to be sued out of her majesty's court of Queen's Bench [*or "C. P." or "Exch. of Pleas"*] against you, at the suit of him the said *A. B.* and proceed thereupon according to law; for that you the said *C. D.* on [*&c. here state the facts fully and explicitly, and you may do so as in a declaration*], and other wrongs to the said *A. B.* did, to his great damage of £—, and against the peace of our lady the now queen. Dated the — day of —, 1840. Your's &c.

John Smith of —, attorney [*or "agent"*]
for the said *Abel Brown*.

[*Indorse it thus:*]

John Smith of —, attorney for the within-named *Abel Brown*.

2. *The like, by the Party himself.*

To *C. D.* esquire, one of her majesty's justices of the peace in and for the county of —.

Sir,

I, *Abel Brown*, of —, do hereby, according to the form of the statute in such case made and provided, give you notice that I shall, by my attorney, *Mr. P. A.* of —, at or soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons to be sued out of her majesty's court of Queen's Bench [*or "C. P." or "Exch. of Pleas"*] against you at my suit, and proceed thereupon according to law; for that you the said *C. D.* on [*&c. state the facts fully and explicitly, and you may do so as in a declaration*], and other wrongs to me the said *A. B.* did, to my great damage of £—, and against the peace of our lady the now queen. Dated the — day of —, 1840. Your's &c.

[*Indorse it thus:*]

Abel Brown of —.

John Smith, attorney for the within-named *Abel Brown*.

(a) See various other forms, Tidd's Forms, 1, &c.; and see 2 Chit. Ar. Pr. 910.

3. *Notice of Action to an Excise or Custom-house Officer.*

To C. D. and E. F. officers of her majesty's Excise
[or "Customs."]

I do hereby, as the attorney [or "agent"] of and for *Abel Brown* of —, according to the form of the statute in such case made and provided, give you notice that I shall, at or as soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons [&c. conclude as in the preceding forms.]
[See 2 Chit. Ar. Pr. 911.]

4. *Demand of perusal and copy of a Warrant from a Constable.*

Mr. C. D.

I do hereby, as the attorney [or "agent"] of and for *Abel Brown* of —, according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant, by virtue or under colour whereof you did, on or about the — day of — last, assault the said *A. B.* and apprehend and carry and convey him in custody before *J. J.* esquire, one of her majesty's justices of the peace in and for the county of — [&c. as the case may be]. Dated the — day of —, 1840.

Your's &c.

John Smith of —,

Attorney for the said *Abel Brown*.

[See 2 Chit. Ar. Pr. 911, 912.]

5. *The like, from a Gaoler.*

Mr. C. D.

I do hereby, as the attorney [or "agent"] of and for *Abel Brown* of —, according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant of commitment and instrument under which you received into your custody the said *A. B.* on or about the — day of — last, and kept and detained him in custody for the space of — then next following. Dated the — day of —, 1840.

Your's &c.

John Smith of —,

Attorney for the said *Abel Brown*.

CHAPTER XII.

ACTIONS AGAINST BENEFICED CLERGYMEN.

1. *Return to a Fieri facias that Defendant is a Beneficed Clerk, ante, 175.*

2. *Fieri facias de bonis Ecclesiasticis (a).*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the right reverend father in God —, by divine permission lord bishop of —, greeting: We command you that of the ecclesiastical goods of C. D. clerk, in your diocese, you cause to be made a certain debt of £—, [or if in *assumpsit*, &c. see *ante*, 148, 149,] which A. B. lately in our court before us [or in C. P. “before our justices,” or in the *Exch.* “before the barons of our Exchequer”] at Westminster recovered against him, and also £—, which in our same court were adjudged to the said A. B. for his damages which he hath sustained, as well on occasion of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record, [or in C. P. omit the words “as appears to us of record,” or in *Exch.* “as by inspecting the rolls of our said Exchequer appears to us”], together with interest upon the said several sums of £— and £—, at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up [or if entered up before the 1st October, 1838, say “from the 1st day of October, A. D. 1838,” and omit the words “on which day the judgment aforesaid was entered up”], and have that money, together with such interest as aforesaid, before us [or in C. P. “before our said justices,” or in *Exch.* “before the said barons”] at Westminster, immediately after the execution hereof, to render to the said A. B. for his debt and damages [or in *assumpsit*, “damages”] and interest aforesaid. For that our sheriff of — returned to us [or “to our said justices,” or “barons”] at Westminster aforesaid, on —, that the said C. D. had not any goods or chattels, or any lay fee, or any money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, which he could seize or take, or pay or deliver to the said A. B., or whereof he could cause to be made the [debt and] damages and interest aforesaid, or any part thereof; and that the said C. D. was a beneficed clerk, to wit, rector of the rectory [or

(a) It would seem that the only difference which the 1 & 2 Vict. c. 110, has effected in this writ is, that interest may be levied in pursuance of the 17th section. The 9th section of the act appears to be inapplicable to an execution against ecclesiastical property. See the form of the entry

on the roll in Tidd's Forms, 378; also a *levari facias de bonis ecclesiasticis* for the arrears of an annuity, *id.*; a writ of sequestration, *id.* 380; and a form of a *fieri facias de bonis ecclesiasticis* to the archbishop during the vacancy of a bishop's see, *id.* 380.

"vicar of the vicarage"] and parish church of —, in the said sheriff's county, and within your diocese; and have there then [*or in C. P. or Exch. "have there"*] this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*Indorse it thus:*] Levy the whole [*or "levy £—"*] and interest, besides costs of levy, officer's fees, and all other incidental expenses. The defendant is rector of —, and resides at —.

P. A. South Square, Gray's Inn, plaintiff's attorney.

— January, 1840.

[*See 2 Chit. Ar. Pr. 915.*]

3. *Sequestrari facias (a).*

Victoria [*&c. as ante, 533, No. 1.*] To the right reverend father in God —, by divine permission lord bishop of —, greeting: Whereas we lately commanded our sheriff of —, that he should cause to be made [*&c. recite the former writ:*] And whereupon our said sheriff of —, on —, returned to us [*or in C. P. "to our said justices" or in the Exchequer, "to the barons of our said Exchequer"*] at Westminster, that the said C. D. was a beneficed clerk, that is to say, rector of the rectory [*or "vicar of the vicarage"*] and parish church of —, in the county of —, and which said rectory and parish church were within your diocese, and that he had not any goods or chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, in his bailiwick, which he could seize or take, or pay or deliver to the said A. B., or whereof he could cause to be made the said [debt and] damages and interest, or any part thereof [*let this agree with the sheriff's return*]: Therefore we command you that you enter into the said rectory [*or "vicarage"*] and parish church of —, and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the damages [*or in debt, "debt and damages"*] and interest aforesaid, of the rents, tithes, oblations, obventions, fruits, issues and profits thereof, and other ecclesiastical goods in your diocese of the said C. D. to be rendered to the said A. B. for his damages [*or in debt, "debt and damages"*] and interest aforesaid [*or in Exchequer, "to be then and there paid to the said A. B. or his attorney in that behalf"*]; whereof the said C. D. is convicted, as appears to us of record [*or in C. P. omit the words "as appears to us of record," or in Exchequer say "as by inspecting the rolls of our said Exchequer appears to us"*]; and what you shall do therein make appear to us [*or in C. P. "to our said justices," or in Exchequer, "to the barons of our said Exchequer"*] at Westminster aforesaid, immediately after the execution hereof, and have there then [*or in C. P. or in Exch. "have there"*] this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 915.*]

4. *Fieri facias for the Residue, de bonis Ecclesiasticis.*

Victoria [*&c. as ante, 533, No. 1.*] To the right reverend father in God —, by divine permission lord bishop of —, greeting: Whereas by our writ we lately commanded you, that of the ecclesiastical goods of C. D. clerk, in your diocese, you should cause to be made [*here recite the writ*

(a) See preceding page, note (a).

of *fi. fa. de bonis ecclesiasticis*, ante, 533, in the past tense, to the teste exclusive]; and you on — returned to us [or “to our said justices” or “barons”] at Westminster aforesaid, that by virtue of the said writ to you directed, you had caused to be made of the ecclesiastical goods of the said C. D. in your diocese £——, parcel of the damages [or “debt and damages”] and interest aforesaid; and that the said C. D. had no ecclesiastical goods in your said diocese whereof the residue of the damages [or “debt and damages”] and interest aforesaid, or any part thereof, could be made [let this agree with the return]: Therefore we command you, that of the ecclesiastical goods of the said C. D. in your diocese, you cause to be made £—— residue of the damages [or “debt and damages”] and such interest as aforesaid; and have you that money [&c. conclude as in the form of the *fi. fa.*, ante, 533, except that you say “for the residue of his [debt and] damages and interest aforesaid.”]

[Indorse it thus:] Levy the whole [or “£——”], and interest on £—— from —, besides all expenses of sequestration and levy. The defendant is rector of —, and resides at —.

P. A., 10, South Square, Gray's Inn, plaintiff's attorney,
—— January, 1840.

[See 2 Chit. Ar. Pr. 915.]

5. *Return by Bishop of Fieri feci to a Fieri facias de bonis Ecclesiasticis.*

By virtue of this writ to me directed, I have caused to be made of the ecclesiastical goods of the within-named C. D. clerk, the debt and damages and interest within mentioned, which I have ready to be rendered to the within-named A. B. for his debt and damages and interest aforesaid, as within I am commanded.

The answer of Henry, Lord Bishop of Norwich.

CHAPTER XIII.

ACTIONS BY PAUPERS.

1. *Petition before Action brought to be admitted to sue in Formâ Pauperis.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

To the Right Honourable [&c. *same as ante*, 525, No. 2.]

The humble petition of A. B. of —,

Sheweth,

That C. D. of — is justly indebted unto your petitioner in the sum of — for [*here state the cause of action*]; and your petitioner hath not yet commenced an action against him for the same, being unable to commence or carry on such action on account of his poverty, as appears by the affidavit hereunto annexed.

Your petitioner therefore most humbly prays your lordship [or in *Exch.* "your honours"] that he may be admitted to prosecute his said action in formâ pauperis; and that — esquire, may be assigned to him as his counsel, and P. A. gentleman, as his attorney, to prosecute the said suit. And your petitioner shall ever pray &c.

[See 2 *Chit. Ar. Pr.* 918.]

2. *Petition to be allowed to carry on in Formâ Pauperis a Suit already commenced (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff and C. D. defendant.

To the Right Honourable [&c. *same as ante*, 525, No. 2.]

The humble petition of A. B. of —,

Sheweth,

That the said defendant is justly indebted unto your petitioner in £— for the price and value of goods sold and delivered by your petitioner to the said defendant, at his request [*or as the case is*]; and your petitioner hath commenced an action against him for the same, but finds himself unable to carry on the said cause, on account of his extreme poverty, as appears by the affidavit hereunto annexed. [*Here add the prayer as in the preceding form.*]

3. *Affidavit in support thereof.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff and C. D. defendant (b).

A. B. of — maketh oath and saith, that he is not worth five pounds

(a) It is doubtful whether the petition can be granted after the commencement of the suit. See 2 *Chit. Ar. Pr.* 918.

(b) Omit this title of the cause, if the action be not already commenced.

in the world (save and except his wearing apparel, and the matter in question in this cause).

Sworn [*&c. ante, 207.*]

A. B.

4. *Opinion of Counsel.*

I humbly conceive that the said petitioner hath good cause of action against the above-named *C. D.* and consent to be his counsel.

F. P.

5. Judge's Order thereon.

B. } Upon reading the petition and affidavit of *A. B.* and the certifi-
c. } cate of counsel, I do admit the plaintiff to sue in formâ pauperis;
D. } and I do assign *F. P.* esquire, to be his counsel, and *P. A.* gentle-
man, to be his attorney.

(Name of chief justice or chief baron.)

CHAPTER XIV.

PROCEEDINGS AGAINST TRADERS SUBJECT TO THE BANKRUPT LAWS.

1. *Affidavit of Debt to be filed in pursuance of 1 & 2 Vict. c. 110, s. 8.*
In the Court of Bankruptcy (a).

A. B. (the creditor) of —, butcher, maketh oath and saith, that C. D. is justly and truly indebted to this deponent in £—— for [&c. here state the nature of the debt as in an affidavit to hold to bail, see ante, 212 to 227]: and that the said C. D. is a trader within the meaning of the laws now in force concerning bankrupts, as this deponent verily believes.

A. B.

Sworn at — before me, X. Y., a commissioner of the Court of Bankruptcy, [or “a master extraordinary of the High Court of Chancery”] this — day of —, A. D. —.

X. Y.

[See 2 Chit. Ar. Pr. 921.]

2. *Notice to Trader that the above Affidavit has been filed, and requiring immediate Payment.*

Mr. C. D.

Take notice, that an affidavit, a copy of which is hereunto annexed, has been filed in her majesty's Court of Bankruptcy, pursuant to the provisions of the 8th section of the 1 & 2 Vict. c. 110; and that I do hereby require immediate payment of the debt in the said affidavit mentioned. Dated this — day of —, A. D. 1840.

A. B.

3. *Bond in pursuance of the 1 & 2 Vict. c. 110, s. 8.*

[Proceed as in the ordinary form of a bond, but make it conditioned “to pay such sum or sums of money as shall be recovered in any action or actions which shall have been brought or shall thereafter be brought for the recovery of the same, [i. e. the debt,] together with such costs as shall be given in the same, or to render himself to the custody of the gaoler of the court in which such action shall have been brought, or may be brought, according to the practice of such court, or within such time and in such manner as the said court or any judge thereof shall direct, after judgment shall have been recovered in such action.”]

(a) This title is, it seems, unnecessary. The affidavit may be made before a master extraordinary of the

Court of Chancery, and filed in the Register Office of the Court of Bankruptcy. Ex parte Hall, 3 Deac. 405.

BOOK IV.

PART I.

PROCEEDINGS INCIDENTAL AND COLLATERAL TO THE ACTION.

CHAPTER I.

PROCESS AND ENTRY OF ON THE ROLL, TO SAVE THE STATUTE OF LIMITATIONS.

SECT. I. *Process by Writ of Summons.*

II. *Process by Writ of Capias under 2 Will. 4, c. 39, before the 1st October, 1838.*

SECTION I.

PROCESS BY WRIT OF SUMMONS (a).

1. *Writ of Summons.*

[*Same as in ordinary cases, see ante, 15, No. 2.*]

2. *Return thereto of Non est inventus.*

The within-mentioned *C. D.* is not found in the [county] within-mentioned, or within 200 yards of the border thereof.

P. A. the within-named plaintiff's attorney.

[*See 2 Chit. Ar. Pr. 922.*]

(a) The 1 & 2 Vict. c. 110, has provided no machinery by which a writ of capias under it can be continued so as to save the statute of limitations. The only way in which

it can now be saved is by writ of summons continued according to the directions of the Uniformity of Process Act, 2 Will. 4, c. 39.

3. *Entry of Writ of Summons and Award of an Alias.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On — the — day of —, A. D. 1840.

(*Day of making the entry.*)

England (to wit): Our lady the queen issued forth her writ close in these words, to wit, Victoria [&c. *here copy the writ of summons verbatim, to the end, and then proceed thus:*] Afterwards and within one calendar month next after the expiration of the said writ, including the day of such expiration, to wit, on the said — day of —, A. D. 1840, (*the day and year first named,*) comes here the said A. B. by P. A. his attorney [or "in his proper person"], and offers himself against the said C. D. in the action aforesaid; and the said P. A., the said A. B.'s attorney, who sued out the said writ [or *if in person, say "the said A. B."*], now here returns that the said C. D. is not found in the county of — aforesaid, or within 200 yards of the border thereof, and the said C. D. does not come and has not appeared to the said action according to the exigency of the said writ: and hereupon the said A. B. [by his attorney aforesaid] prays another writ of our lady the queen to be issued out of the said court here against the said C. D. in continuation of the said first-mentioned writ, and it is granted to him, &c. And hereupon our said lady the queen, within one calendar month next after the expiration of the said first-mentioned writ, including the day of such expiration, to wit, on the — day of — [*date of the alias*] issued forth her other writ in continuation of the said first-mentioned writ close in these words, to wit, Victoria, [&c. *here copy the alias writ of summons verbatim to the end, and then proceed thus:*] And which said last-mentioned writ contains a memorandum indorsed thereon [or "subscribed thereto"] specifying the day of the date of the said first-mentioned writ &c.

[See 2 Chit. Ar. Pr. 923, 924.]

4. *Docket Paper thereon in Q. B.*

The entry of P. A. gentleman, one &c. on —, the — day of —, A. D. 1840.

— (*the county in which defendant is described to be in the writ,*) (to wit.) Entry of [writ of summons] between A. B. plaintiff and C. D. defendant, on [promises], dated the — day of —, A. D. 1840.

5. *Alias Writ of Summons with Indorsement or Subscription thereon of the Date of the first Writ of Summons.*

[*The writ is the same as in ordinary cases, see form, ante, 16, No. 4, but the following memorandum should be indorsed on or subscribed thereto:*] The first writ of summons issued in this action was dated the — day of —, A. D. 1840.

[See 2 Chit. Ar. Pr. 924.]

6. *Return thereto of Non est inventus.*

[Same as ante, 539, No. 2.]

7. *Entry of Return to the Alias Writ of Summons and Award of Pluries.*

[*After the entry already made of the writ of summons, return, and award of an alias, as supra, No. 3, to the end, proceed thus:*] After-

wards, and within one calendar month next after the expiration of the said second-mentioned writ, including the day of such expiration, to wit, on — the — day of —, A. D. 1840, comes here the said *A. B.* by *P. A.* his attorney aforesaid, [or “in his proper person,”] and offers himself against the said *C. D.* in the action aforesaid, and the said *A. B.* [or *P. A.* the said *A. B.*’s attorney”], who sued out the said last-mentioned writ [or if in person, say “and the said *A. B.*”] here now returns that the said *C. D.* is not found in the county of — aforesaid, or within 200 yards of the border thereof, and the said *C. D.* does not come and has not appeared to the said action according to the exigency of the said last-mentioned writ; and hereupon the said *A. B.* [by his attorney aforesaid] prays another writ of our said lady the queen to be issued out of the said court here against the said *C. D.* in continuation of the said last-mentioned writ, and it is granted to him &c. And hereupon our said lady the queen, within one calendar month next after the expiration of the said last-mentioned writ, including the day of such expiration, to wit, on the — day of —, A. D. —, issued forth her other writ, in continuation of the said last-mentioned writ close in these words, to wit: *Victoria* [&c. here copy the pluries writ of summons verbatim to the end, and then proceed thus:] and which said last-mentioned writ contains a memorandum indorsed thereon [or “subscribed thereto”] specifying the day of the date of the said first-mentioned writ &c.

8. *Pluries Writ of Summons, with Indorsement or Subscription thereon of the Date of the first Writ.*

[The writ is the same as in ordinary cases, see form, ante, 16, No. 4, but indorse on or subscribe to it the following memorandum:] The first writ of summons issued in this action was dated the — day of —, A. D. 1840.

[See 2 Chit. Ar. Pr. 924.]

9. *Return thereto of Non est inventus.*

[Same as ante, 539, No. 2.]

10. *Entry of Return to the Pluries Writ of Summons and Award of another Pluries.*

[After the entry already made of the alias writ of summons, return, and award of a pluries, as ante, 540, No. 7, to the end, proceed thus:] Afterwards, and within one calendar month next after the expiration of the said third-mentioned writ, including the day of such expiration, to wit, on — the — day of —, A. D. 18—, comes here the said *A. B.* by the said *P. A.* his attorney aforesaid [or “in his proper person”], and offers himself against the said *C. D.* in the action aforesaid: And the said *P. A.*, the said *A. B.*’s attorney, who sued out the said last-mentioned writ [or if in person, say “And the said *A. B.*”] now here returns, that the said *C. D.* is not found in the county of — aforesaid, or within 200 yards of the border thereof, and the said *C. D.* does not come and has not appeared to the said action according to the exigency of the said last-mentioned writ: and hereupon the said *A. B.*, by his attorney aforesaid, prays another writ of our said lady the queen to be issued out of the said

court here against the said *C. D.* in continuation of the said last-mentioned writ, and it is granted to him &c., and hereupon [*&c. so entering other plurics writs.*]

SECTION II.

PROCESS BY WRIT OF CAPIAS, ISSUED UNDER 2 WILL. 4, c. 39, BEFORE
1ST OCT., 1838 (a).

1. *Writ of Capias.*

[*See the schedule of 2 W. 4, c. 39, No. 4.*]

2. *Return thereto of Non est inventus.*

[*Same as ante, 235, No. 3.*]

3. *Entry of Writ of Capias and Award of an Alias.*

In the Queen's Bench [*or "C. P." or "Exch. of Pleas."*]

On — the — day of — A. D. 1840 (*day of making the entry*).

England (to wit.) Our lady the queen sent to her sheriff of — her writ against *C. D.* close in these words, to wit, Victoria [*&c. here copy the writ of capias verbatim to the end, and then proceed thus:*] And afterwards and within one calendar month next after the expiration of the said writ, including the day of such expiration, to wit, on —, the said — day of —, A. D. 1840, (*the day and year first named,*) comes here the said *A. B.* by *P. A.* his attorney, [*or "in his proper person,"*] and offers himself against the said *C. D.* in the action aforesaid: And the sheriff, to wit, *S. S.* esquire, sheriff of the county of — aforesaid, now here returns that the said *C. D.* is not found in his bailiwick, and the said *C. D.* does not come; and hereupon the said *A. B.* by his attorney aforesaid prays another writ of our lady the queen to be issued out of the said court here against the said *C. D.* in continuation of the said first-mentioned writ, and it is granted to him &c. And hereupon our said lady the queen, in continuation of the said first-mentioned writ, within one calendar month next after the expiration thereof, including the day of such expiration, to wit, on the — day of —, A. D. —, sent to her sheriff of — her other writ close in these words, to wit, Victoria [*&c. here copy the alias writ of capias verbatim, to the end, and then proceed thus:*] and which said last-mentioned writ contains a memorandum indorsed thereon [*or "subscribed thereto"*] specifying the day of the date of the said first-mentioned writ &c.

(a) There is no machinery provided by 1 & 2 Vict. c. 110, for continuing the writ of capias under that act, so as to save the statute of limitations. As, however, cases may still occur in

practice in which writs issued previously to that act may be employed for the purpose, it is thought advisable to retain the forms relative to such writs.

4. *Docket Paper thereon.*

The entry of P. A. gentleman, one &c. of —, the — day of —, A. D. 1840.

Middlesex (county to the sheriff of which the writ is directed), to wit. Entry of [writ of capias] between A. B. plaintiff and C. D. defendant, dated the — day of —, A. D. 1840.

5. *Alias Writ of Capias, with Indorsement or Subscription thereon of the Date of the first Writ of Capias.*

[The writ is the same as the first writ of capias (see schedule to 2 Will. 4, c. 39, No. 4), except that after the words "we command you," should be inserted the words "as before we have commanded you;" the following memorandum should be indorsed on or subscribed thereto:] The first writ of capias issued in this action was dated the — day of —, A. D. 1840.

[See 2 Chit. Ar. Pr. 924.]

6. *Return thereto of Non est inventus.*

[Same as ante, 235, No. 3.]

7. *Entry of Return to Alias Writ of Capias and Award of Pluries.*

[After the entry already made of the writ of capias, return, and award of an alias, as ante, 542, No. 3, to the end, proceed thus:] Afterwards and within one calendar month next after the expiration of the said second-mentioned writ, including the day of such expiration, to wit, on — the — day of —, A. D. 18—, comes here the said A. B. by the said P. A. his attorney aforesaid, [or "in his own proper person,"] and offers himself against the said C. D. in the action aforesaid; and the sheriff, to wit, S. S. esquire, sheriff of the county of — aforesaid, now here returns that the said C. D. is not found in his bailiwick, and the said C. D. does not come, and hereupon the said A. B. [by his attorney aforesaid] prays another writ of our said lady the queen to be issued out of the said court here against the said C. D. in continuation of the said last-mentioned writ, and it is granted to him &c.: And hereupon our said lady the queen, in continuation of the said second-mentioned writ, within one calendar month next after the expiration thereof, including the day of such expiration, to wit, on the — day of —, A. D. —, sent to her sheriff of — her other writ close in these words, to wit, Victoria [&c. here copy the pluries writ of capias verbatim to the end, and then proceed thus:] And which said last-mentioned writ contains a memorandum indorsed thereon [or "subscribed thereto"] specifying the day of the date of the said first-mentioned writ.

[See 2 Chit. Ar. Pr. 924.]

8. *Pluries Writ of Capias, with Indorsement or Subscription thereon of the Date of the first Writ.*

[The writ is the same as the first writ of capias (see schedule to 2 Will. 4, c. 39, No. 4), except that after the words "we command you," should be inserted the words "as before we have commanded you," but indorse on or subscribe to it the following memorandum:] The first writ of capias issued in this action was dated the — day of —, A. D. 1840.

[See 2 Chit. Ar. Pr. 924.]

9. *Return thereto of Non est inventus.*

[*Same as ante, 235, No. 3.*]

10. *Entry of a Pluries Writ of Capias, and Award of another Pluries.*

[*After the entry already made of the alias writ of capias, return, and award of the pluries, as ante, 543, No. 7, to the end, proceed thus:*] Afterwards, and within one calendar month next after the expiration of the said third-mentioned writ, including the day of such expiration, to wit, on — the — day of —, A. D. 1840, comes here the said A. B. by the said P. A. his attorney aforesaid, [*or "in his proper person,"*] and offers himself against the said C. D. in the action aforesaid; and the sheriff, to wit, S. S. esquire, sheriff of the county of — aforesaid, now here returns that the said C. D. is not found in his bailiwick, and the said C. D. does not come; and hereupon the said A. B. [by his attorney aforesaid] prays another writ of our said lady the queen to be issued out of the said court here against the said C. D. in continuation of the said last-mentioned writ, and it is granted to him &c. And [*&c. so continuing the entry of another writ of pluries, as in the form, ante, 543, No. 7.*]

CHAPTER II.

OUTLAWRY.

SECT. I.—*Outlawry upon Mesne Process, 545 to 557.*

II.—*Outlawry upon Final Process, 558.*

III.—*Reversal of Outlawry, 558 to 560.*

SECT. I.—OUTLAWRY UPON MESNE PROCESS (a).

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1. *Writ of Summons, ante, 15, No. 2; Writ of Distringas, ante, 20, No. 7; Præcipe for, 19, No. 6; Return of Non est inventus and Nulla bona to Distringas, ante, 22, No. 14.*

[See 2 Chit. Ar. Pr. 926.]

2. *Writ of Exigi facias, after a Distringas (b).*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriffs of [London], greeting: We command you that you cause *C. D.* late of —, in the county of —, tailor, to be demanded from husting to husting, [or if the *exigi facias* be not directed to the sheriffs of London, say “from county court to county court,”] until, according to the law and custom of England, he be outlawed, if he do not appear; and if he do appear, then that you take him, and him safely keep (b), until he shall have appeared in our court before us [or in *C. P.* “before our justices,” or in *Exch.* “before the barons of our Exchequer”] at Westminster, to answer *A. B.* in an action on promises, at the suit of the said *A. B.*, or until the said *C. D.* shall by other lawful means be discharged from your custody; and whereupon you returned to us [or in *C. P.* “to our justices,” or in *Exch.* “to our barons”] at Westminster, on — last past, that the said *C. D.* was not found in your bailiwick, and that he had nothing in your bailiwick by which he could be distrained; and how you shall have executed this our writ make appear to us [or in *C. P.* “to our said justices,” or in

(a) It would seem that the plaintiff cannot proceed to outlawry on a *capias* issued under 1 & 2 Vict.c. 110. The forms in this chapter are therefore confined to outlawry by writ of summons and *distringas*. Forms relative to the *capias* under 2 Will. 4, c. 39, will be found in the 4th edition of this work, pp. 527, 528, &c.

(b) It is submitted that this is the correct form, without reciting the *distringas*, &c. see note (a) *supra*. There is no authority given by the act or otherwise to issue a *second* *distringas* against the defendant, and it is therefore more correct to require the sheriff, by the *exigi facias*, “to take” him if he do not appear.

Exch. "to the said barons"] at Westminster, on —, and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.
[See 2 Chit. Ar. Pr. 928.]

3. Return to Exigi facias.

By virtue of this writ to me directed, at my county court held at —, in and for the county of —, on —, the — day of —, [or if in London, "at the husting of pleas of land, holden in the Guildhall of the city of London, on —,"] in the year within written, the within-named C. D. was a first time demanded, and did not appear: And at my county court, held at — aforesaid, on —, the — day of —, in the year aforesaid, [or in London "at the hustings" &c. *as supra*,] the said C. D. was a second time demanded, and did not appear. And at my county court, held at — aforesaid, on — the — day of —, in the year aforesaid, [or in London, "at the husting,"] &c. *as supra*,] the said C. D. was a third time demanded, and did not appear. And at my county court, held at — aforesaid, on — the — day of —, in the year aforesaid, [or in London "at the husting" &c. *as supra*] the said C. D. was a fourth time demanded, and did not appear. And at my county court, held at — aforesaid, on — the — day of —, in the year aforesaid, [or in London "at the husting" &c. *as supra*,] the said C. D. was a fifth time demanded, and did not appear: Therefore by the judgment of —, esquire, and —, esquire, coroners of our sovereign lady the queen for the county aforesaid, the said C. D., according to the law and custom of England, is outlawed.

The answer of S. S. esquire, sheriff.

N.B. Supposing that all the county courts or hustings were not holden in the time of the same sheriff, the return should be thus:

By virtue of this writ to me directed [&c. here state the county courts or hustings at which the defendant was demanded, in the time of the late sheriff, and conclude his return with "The answer of S. S. sheriff;" then proceed on a new line thus:]

This writ, as above indorsed, was delivered to me the under-named present sheriff, by the above-named late sheriff, at his going out of office.

At my county court [&c. here state the county courts or hustings at which the defendant was demanded, in the time of the succeeding sheriff and conclude his return thus: "The answer of S. S. esquire, sheriff."]

[See 2 Chit. Ar. Pr. 929.]

4. Allocatur Exigent.

Victoria, [&c. *as ante*, 545, No. 2,] to the sheriff of —, greeting: We command you, that allowing those — county courts, [or if in London, "those — hustings,"] at which C. D. late of — was demanded and did not appear, as you returned to us [or in C. P. "to our justices," or in *Exch.* "to the barons of our Exchequer"] at Westminster, on — (the return of the exigent) last past, you cause the said C. D. to be further demanded at your next county court, [or "husting," if only one return is wanting, or if more than one, "from county court to county court," or "from husting to husting,"] until, according to the law and custom of England, he be outlawed if he do not appear: and if he do appear, then that you take him and him safely keep until he shall have appeared in our court before us [or in C. P. "before our justices," or in *Exch.* "before

the barons of our Exchequer"] at Westminster, to answer *A. B.* in an action on promises, [or "debt," &c. *as the case may be,*] at the suit of the said *A. B.*, or until the said *C. D.* shall by other lawful means be discharged from your custody; and in what manner you shall have executed this our writ make appear to us [or in *C. P.* "to our said justices," or in *Exch.* "to the said barons"] at Westminster, on —, and have there then this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 928, 929.*]

5. *Writ of Proclamation.*

Victoria, [*&c. as ante, 545, No. 2,*] to the sheriff of —, greeting: Whereas by our writ we lately commanded you that you should cause *C. D.* late of —, to be demanded from county court to county court, [or if in *London*, "from husting to husting,"] until, according to the law and custom of England, he should be outlawed if he did not appear; and if he did appear, then that you should take him, and cause him to be safely kept until he should appear in our court before us [or in *C. P.* "before our justices," or in *Exch.* "before the barons of our Exchequer"] at Westminster, to answer *A. B.* in an action on promises, [or "debt," *as the case may be,*] at the suit of the said *A. B.*, or until the said *C. D.* should by other lawful means be discharged from your custody. Therefore we command you that, in pursuance of the statutes* in such case made and provided, you cause the said *C. D.* to be proclaimed on three several days, according to the said statutes, (one of which proclamations shall be reduced into writing, and copies thereof in writing or print, or partly in writing and partly in print, shall previously to the commencement of divine service on a Sunday, at least a month before the said *C. D.* shall be a fifth time demanded by virtue of the first-mentioned writ, be affixed on or near to the doors of all the churches and chapels of that town or parish where the defendant, at the time of the first-mentioned writ awarded, was dwelling, or if the defendant was then dwelling out of any parish, then on or near to the doors of all the churches and chapels of the next adjoining parish in the same county*,) that he render himself unto you, so that you may safely keep him until he shall appear in our court before us [or in *C. P.* "before our justices," or in *Exch.* "before the barons of our said Exchequer"] at Westminster, to answer to the said *A. B.* in the action aforesaid, or shall by other lawful means be discharged from your custody, and have there this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 929; see a form of writ directed into a county palatine, Tidd's Forms, 41, and a form, post, 549.*]

6. *Writ of Foreign Proclamation.*

Victoria, [*&c. as ante, 545, No. 2,*] to the sheriff of —, greeting: Whereas by our writ we lately commanded our sheriff of —, that he should cause *C. D.* late of —, to be demanded from county court to county court, [or if in *London*, "from husting to husting,"] until, according to the law and custom of England, he should be outlawed, if he did not appear; and if he did appear, then that he should take him and cause him to be safely kept until he should appear in our court before us [or in *C. P.* "before

our justices," or in *Exch.* "before the barons of our Exchequer"] at Westminster, to answer to *A. B.* in an action on promises, [or "debt," as the case may be,] or until the said *C. D.* should by other lawful means be discharged from his custody. Therefore we command you, that in pursuance of the statutes [&c. as in preceding form between the asterisks**] that he render himself to our sheriff of —, so that he may safely keep him until he shall appear in our court before us [or in *C. P.* "before our justices" or in *Exch.* "before the barons of our said Exchequer"] at Westminster, to answer the said *A. B.* in the action aforesaid, or shall by other lawful means be discharged from his custody, and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 *Chit. Ar. Pr.* 929.]

7. Return to Writ of Proclamation.

By virtue of the within writ to me directed, I caused the within-named *C. D.* to be proclaimed three several days, according to the effect of the within-mentioned statute, as it is within commanded me.

The answer of S. S. sheriff.

[See 2 *Chit. Ar. Pr.* 930, and a more special form, *Tidd's Forms*, 41.]

8. Common Appearance.—Bail.

[Same as usual, see forms, ante, 17, and ante, 246, to 264. See also 2 *Chit. Ar. Pr.* 930.]

9. Supersedeas to the Exigent.

Victoria, [&c. as ante, 545, No. 2,] to the sheriff of —, greeting: Whereas by our writ we lately commanded you that you should cause *C. D.* late of —, to be demanded from county court to county court, [or if in London, "from husting to husting,"] until, according to the law and custom of England, he should be outlawed, if he did not appear; and if he did appear, then that you should take him, and cause him to be safely kept until he should appear in our court before us [or in *C. P.* "before our justices," or in *Exch.* "before the barons of our Exchequer"] at Westminster, to answer to *A. B.* in an action on promises, [or "debt," as the action is,] or until he should by other lawful means be discharged from your custody. But because the said *C. D.* before the issuing [or "return"] of our said writ of exigent, appeared in our said court by *D. A.* his attorney, and afterwards offered himself to answer the said *A. B.* in the action aforesaid, so that our said writ did not duly issue thereupon against the said *C. D.*: therefore we command you, that you altogether cease any further demanding, outlawing, taking, or any way molesting the said *C. D.* on that occasion, and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 *Chit. Ar. Pr.* 930.]

10. *Return to the Exigent thereon.*

I have altogether ceased from executing this writ, having received her majesty's writ of supersedeas for that purpose.

The answer of S. S. sheriff.

11. *Capias Utlagatum (a).*

Victoria, [&c. as ante, 545, No. 2,] to the sheriff of —, greeting: We command you, that you do not omit by reason of any liberty of your county, but that you take C. D. late of —, being outlawed in your said county, [or "in the county of —," where the outlawry was,] on — the — day of — last past, at the suit of A. B. in an action on promises, [or "debt," as the action is; if the writ issue into a county different from that in which defendant was outlawed, say "as our sheriff of — returned to us," (or in C. P. "to our justices," or in Exch. "to the barons of our Exchequer") at Westminster, at a certain day now past,] if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [or in C. P. "before our justices," or in Exch. "before the barons of our said Exchequer"] at Westminster, on — (b), to do and receive what our said court [or "justices," or "barons"] shall consider of him in this behalf, and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 931.]

12. *The like, to a County Palatine.*

Victoria, [&c. as ante, 545, No. 2,] to our chancellor of our county palatine of Lancaster, [or "Durham"(c),] or to his deputy there, greeting: We command you, that by our writ, under the seal of our said county palatine to be duly made and directed to the sheriff of the same county, you cause the said sheriff to be commanded that he do not omit by reason of any liberty of his county, but that he take C. D. late of —, being outlawed [&c. proceed as directed in the preceding form], if he shall be found in his bailiwick, and him safely keep, so that he may have his body before us [&c. conclude as in the preceding form.]

13. *Special Capias Utlagatum.*

Victoria, [&c. as ante, 545, No. 2,] to the sheriff of —, greeting: We command you, that you do not omit by reason of any liberty of your county, but by the oath of good and lawful men of your said county you diligently inquire what goods and chattels, lands and tenements, C. D. late of —, hath or had in your bailiwick, on the — day of — last past, or at any time afterwards, on which day he was outlawed in your county, [or "in the county of —,"] at the suit of A. B. in an action on promises, [or "debt," or as the action is,] as you have lately returned to us [or in C. P. "to our justices," or in Exch. "to the barons of our

(a) There is no occasion for a testatum writ. See 2 Chit. Ar. Pr. 931.

(b) This writ is not within the 3 & 4 Will. 4, c. 67, s. 2, allowing writs

of execution to be returnable immediately after the execution thereof.

(c) See as to Durham, ante, 21, note (b), and 1 & 2 Vict. c. 110, s. 3.

Exchequer." [If the writ issue into a county different from that in which defendant was outlawed, here say "as our sheriff of — returned to us (or in C. P. "to our justices," or in Exch. "to the barons of our Exchequer") at Westminster, at a certain day now past,"] and by their oath cause the same to be extended and appraised, according to the true value thereof; and what you find by that inquisition take into your hands, and cause to be safely kept, so that you answer to us for the true value and issues thereof; and having so extended and appraised the same, what you shall have done thereupon make known to us [or in C. P. "to our justices," or in Exch. "to the barons of our said Exchequer"] at Westminster, on —, distinctly and plainly, under your seal, and the seals of those by whose oath you shall have made that extent and appraisement. And for that the said C. D. so being outlawed conceals himself, and runs up and down in your county in contempt of us, and in prejudice of our crown; as we are informed: We command you that you take the said C. D. wheresoever he shall happen to be found in your bailiwick, as well within liberties as without, and keep him safely, so that you may have his body before us [or in C. P. "before our justices," or in Exch. "before the barons of our said Exchequer"] at Westminster, at the aforesaid time, to do and receive what our said court shall consider of him in this behalf, and have there this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 932.]

14. Return thereto.

The execution of this writ appears in a certain inquisition to this writ annexed.

15. Inquisition thereon.

— (to wit.) An inquisition indented, taken at — in the county of —, on the — day of —, in the — year of the reign of our sovereign lady Victoria, before me S. S. sheriff of the said county, by virtue of the queen's writ to me directed and to this inquisition annexed, upon the oath of E. F., G. H., I. K. [&c. set out the names of all the jurors], honest and lawful men of my bailiwick, who, being sworn and charged to inquire of all such matters and things as in the said writ are mentioned and contained, on their oath say, that C. D. in the said writ to this inquisition annexed, on —, on which day he was outlawed in the said county [or "in the county of —," or "in London"], at the suit of A. B. in an action on promises [or "debt," as the action is], whereof he is convicted, was and yet is possessed of the goods and chattels following, that is to say [set out the goods with particularity], of the value of £—, as of his own proper goods and chattels [or if he have no goods, say "had no goods or chattels in my bailiwick to the knowledge of the said jurors"] : And the jurors aforesaid, upon their oath aforesaid, do further say, that the said C. D. on — last past (on which day he was outlawed as aforesaid), was and yet is seised in his demesne as of fee [or "for the term of his life"], of and in [two messuages, two yards, and ten acres of land] with the apputenances, situate in the parish of —, in the said county, now in the tenure and occupation of T. T. of the yearly value of £—, in all issues beyond reprises: all and singular which said [goods and chattels, tenements and premises,] I the said sheriff, by virtue of the said writ, on the said day of the taking of this inquisition, have taken and

caused to be seized into the hands of our said lady the queen, as by the said writ I am commanded: And the jurors aforesaid, upon their oath aforesaid, do further say, that the said *C. D.* on — last past (on which day he was outlawed as aforesaid), or at any time afterwards, had not nor hath he any other or more [goods or chattels, lands or tenements], in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I the said sheriff as the jurors aforesaid, have severally set our respective seals to this inquisition, on the day and year and at the place aforesaid.

[*Signature and seals of the sheriff and jurors.*]
[*See 2 Chit. Ar. Pr. 932.*]

16. *Venditioni exponas* (a).

Victoria, [*&c. as ante, 545, No. 2,*] to the sheriff of —, greeting: Whereas by an inquisition indented taken before you, at — in your county, on the — day of —, in the — year of our reign, by virtue of our writ of special *capias utlagatum*, under the seal of our Court of Queen's Bench [*or "Common Pleas," or "Exchequer of Pleas"*] to you the said sheriff directed, whereby we commanded you to inquire what goods and chattels, lands and tenements, *C. D.* late of — had in your bailiwick, the — day of — then last past, or at any time afterwards, on which day he was outlawed in your said county, at the suit of *A. B.* in an action on promises [*or "debt," as the action is*], it was found by the oath of *E. F.* and other good and lawful men of your said county, that *C. D.* in the said writ named, on the — day of — then last, on which day he became outlawed, and on the day of taking the said inquisition, was possessed of his own proper goods and chattels, of and in the several goods and chattels particularly mentioned and expressed in the schedule or inventory thereof hereunto annexed, which said goods and chattels were worth to be sold the sum of £—, all which said goods and chattels you the said sheriff, by virtue of our said writ, on the day of taking the said inquisition, did seize and take into our hands, as by the said writ and inquisition taken thereupon, transcribed into our Court of Exchequer, and there remaining in the custody of our remembrancer, more fully appears: And we being desirous to be satisfied of the value of the said goods and chattels in the said inquisition mentioned, as is just, command you that you sell or cause to be sold the said goods and chattels and every part thereof, for the best price that can be got for the same, and at the least for the said sum of £—, at which they were so appraised as aforesaid, so that you have the sum of money arising by such sale before the barons of the Exchequer at Westminster, on the — day of this instant —, then and there to be paid to our use; and that you make then and there distinctly and plainly appear to our said barons all that you shall do concerning the premises, and have there this writ. Witness — (*name of chief baron*), at Westminster, the — day of —, in the year of our Lord —.

By the said transcript, and by the barons.
[*See 2 Chit. Ar. Pr. 932.*]

(a) This writ is issued out of, and returnable in the Exchequer, on the revenue side of the court.

17. *Return thereto.*

By virtue of this writ to me directed, I have caused the goods and chattels in the schedule hereunto annexed mentioned, to be sold for £——, being the best price I could get for the same; which money I have before the barons of the queen's Exchequer at Westminster, on the day within mentioned, ready to be paid to her majesty's use, according to the command of this writ.

The answer of S. S. sheriff.

18. *Levari facias, for levying the Issues and Profits of the Land (a).*

Victoria, [*&c. as ante, 544, No. 2,*] to the sheriff of ——, greeting: Whereas S. S. our late sheriff of ——, by virtue of our writ of *capias utlagatum*, issuing out of our court of Queen's Bench [*or "C. P." or "Exch. of Pleas"*] at Westminster, against C. D. late of ——, who was outlawed in the county of —— [*or "in London"*], on the —— day of ——, in the —— year of our reign, at the suit of A. B. in an action on promises [*or "debt," as the action was*], to the damage of the said A. B. of £——, to our said late sheriff directed, on the —— day of ——, in the —— year aforesaid, seized and took into our hands a certain [*here state the real property seized, as an annuity, term of years &c. as the case may be: see a form of levari facias for levying arrears of an annuity charged on land, Tidd's Forms, 45*]; which said [annuity and arrears] were found to be the property of the said C. D., as by the transcript of the said writ of *capias utlagatum*, and the return thereof, and of a certain inquisition thereupon taken, certified unto our Exchequer, and there in our custody remaining, more fully appears: Now we, being desirous to be satisfied of the —— [arrears of the said annuity], from the said time of taking thereof into our hands, and which have not been answered to us, and also the [future payments thereof, for and during the natural life of the said C. D.] with all the speed we can, as is just, do command you that you omit not by reason of any liberty of your county, but that you enter the same, and cause to be raised, collected, and levied the said last-mentioned [arrears] and also [the future payments of the said annuity], as the same shall from time to time become due as aforesaid: And have the monies which you shall so cause to be raised, collected, and levied, before the barons of our Exchequer at Westminster, on ——, to be then and there paid to our use; and have there this writ. Witness —— (*name of chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 Chit. Ar. Pr. 932.]

19. *Petition to Lords of Treasury, for a Lease of Outlaw's Land (b).*

To the right honourable the lords commissioners of her majesty's treasury.

The humble petition of A. B. of ——

Sheweth,

That C. D. late of ——, being justly indebted to your petitioner in the sum of £—— [for the price and value of work done [*&c. as the cause of action was, or perhaps this may be omitted altogether*], your petitioner com-

(a) See preceding page, note (a).

(b) See the form, Tidd's Forms, 46; 2 Sell. Prac. 406.

menced an action against the said *C. D.* for the recovery thereof, wherein he has proceeded to outlawry; and that by virtue of a certain writ of special *capias utlagatum*, issued upon the return of the writ of *exigi facias* against the said *C. D.* directed to the then sheriff of —, *S. S.* esquire, then sheriff of the said county, returned to the said writ of special *capias utlagatum* to him directed, an inquisition indented, taken at —, in the said county, on the — day of —, in the year of our Lord 18—, by which it was found, amongst other things, that the said *C. D.* on —, on which day he was outlawed at the suit of your petitioner, was seised in his demesne as of fee [*or “for the term of his life,” as the case may be*], of and in two messuages, two yards and ten acres of land, with the appurtenances, situate in the parish of —, in the county aforesaid, then in the occupation of — (*see the inquisition*), of the yearly value of £— in all issues, beyond reprises; and that the said sheriff, by virtue of the said writ, on the said day of taking that inquisition, had taken and caused to be seized into the hands of our said lady the now queen, all and singular the said premises with the appurtenances, as by the said writ he was commanded, as by the return of the said writ of special *capias utlagatum*, now remaining of record in her majesty's court of Exchequer, may more fully and at large appear: And your petitioner further sheweth unto your lordships, that the said outlawry still remains in full force and effect, not vacated, superseded, reversed, or annulled; and that your petitioner's said debt, and the costs and expenses which he has necessarily been put to in prosecuting the said *C. D.* to outlawry, amount to a large sum of money, that is to say, to the sum of £—, and upwards, and that no part thereof has been paid or satisfied to your petitioner. And your petitioner therefore humbly prays your lordships' favour and interposition, that by and with the consent of her majesty's attorney-general in this behalf obtained, a lease may be made to your petitioner, by and from her majesty's court of Exchequer, whereby your petitioner may be enabled to levy, take, collect, and receive the issues and profits of the said outlaw's lands and tenements, so found by the said inquisition, to the value thereof respectively appraised and extended, till such times as sufficient thereout shall be made, collected, and levied, to satisfy your petitioner's said debt, costs, and expenses, or until such time as the said *C. D.* shall cause the said outlawry to be reversed or annulled. And your petitioner, as in duty bound, shall ever pray &c.

A. B.

[*See 2 Chit. Ar. Pr. 933.*]

20. *The like, to have the Produce of Outlaw's Goods made over to Plaintiff(a).*

To the right honourable the lords commissioners of her majesty's treasury.

The humble petition of *A. B.* of —

Sheweth,

That *C. D.* late of —, being justly indebted to your petitioner in the sum of £—, your petitioner commenced an action against the said *C. D.* for the recovery thereof, wherein he has proceeded to outlawry.

That a writ of special *capias utlagatum* having issued against the said *C. D.* out of her majesty's court of Queen's Bench [*or “C. P.” or “Exch. of Pleas”*] at Westminster, at the suit of your petitioner, an inquisition

(a) *See 2 Sell. Prac. 401.*

was taken thereon by the sheriff of *M.* whereby certain goods and chattels to the value of £——, mentioned in the said inquisition, were by the said sheriff seized and taken into her majesty's hands; which writ and inquisition being transcribed into her majesty's court of Exchequer at Westminster, a writ of venditioni exponas duly issued out of the said court, whereon the said sheriff hath returned, that he had by virtue thereof caused the goods and chattels in the said last writ mentioned to be sold for £——, being the best price he could get for the same; which money he had before the barons of the queen's Exchequer at Westminster on the day in the said last writ mentioned, ready to be paid to her majesty's use, and which money now remains in the hands of the said sheriff.

That your petitioner's said debt, and the costs and expenses he has been at in the said proceedings, greatly exceed the sum so remaining in the sheriff's hands; and as her majesty is not concerned in interest, but her name only made use of by your petitioner, for the recovery of the said debt:

Your petitioner therefore most humbly prays your lordships, that her majesty's attorney general may be authorized to consent, on behalf of her majesty, that the said sum of £—— may be paid to your petitioner, towards satisfaction of his said debt, costs, and expenses. And your petitioner, as in duty bound, shall ever pray, &c. A. B.

[See 2 Chit. Ar. Pr. 933.]

21. Reference thereon to Solicitor of Lords of the Treasury (a).

Whitehall Treasury Chamber, —— day of ——, 1840.

The right honourable the lords commissioners of her majesty's treasury are pleased to refer this petition to —— (*the treasury solicitor*), who is to consider the same, and report to their lordships a true state of the petitioner's case, together with his opinion what is fit to be done therein.

22. Certificate of Clerk in Court (b).

These are to certify, that in —— term, in the —— year of the reign of her present majesty Queen Victoria, a transcript of an outlawry was returned and filed in this court against *C. D.*, late of ——, outlawed in ——, at the suit of *A. B.* in an action on promises [*or "debt," as the action was*]: by which transcript it appears that several goods and chattels of the said *C. D.* were seized into her majesty's hands by *S. S.* esquire, then sheriff of the said county of ——, by virtue of a special *capias utlagatum*, in the said transcript specified; and I further certify, that a writ of venditioni exponas has issued, for selling the said goods and chattels so seized, whereon the said sheriff hath returned that he hath sold the same for £——.

[See 2 Chit. Ar. Pr. 933.]

(a) See the forms, Tidd's Forms, 48 : 2 Sell. Prac. 402.

(b) In all proceedings on a judgment of outlawry, the clerks in court

and side clerks have an exclusive right to practise. 2 Chit. Ar. Pr. 932, n. (r).

23. Affidavit of Plaintiff's Debt and Costs.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

A. B. of — maketh oath and saith, that the above-named *C. D.* is justly and truly indebted unto this deponent in the sum of £—— according to the annexed account, and also in the further sum of £——, for costs paid to Mr. — this deponent's solicitor, in prosecuting the outlawry in this cause against the said *C. D.*

A. B.

Sworn [&c. *see ante*, 207.]

24. Report of Solicitor of Treasury on the Reference.

To the right honourable the lords commissioners of her majesty's treasury.

May it please your lordships,

In obedience to your lordships' commands signified to me by Mr. — I have considered of the annexed petition of *A. B.*, setting forth that *C. D.* [&c. *reciting the petition*].

And I do humbly certify to your lordships, that I have received satisfaction as to the truth of all the allegations in the said petition contained as well by sight of the several records thereby referred to, and a certificate of the said outlawry's being transcribed into the office of her majesty's remembrancer of the Exchequer, signed by Mr. —, one of the attornies of that office, as by the affidavit of the petitioner, whereby it appears that the said *C. D.* is justly indebted to the petitioner in the sum of £—— for [&c. *as the case may be*].

And it appearing by the affidavit of the said petitioner, that his said debt, with the several charges he has been already put to in outlawing the said *C. D.*, do exceed the sum levied by the sheriff, and as the petitioner must still necessarily be put to a further expense, I am humbly of opinion, that it may be proper for your lordships to send your warrant to her majesty's attorney general, authorizing him to consent to an order of her majesty's court of Exchequer for — esquire, the present sheriff of the county of —, to pay over the said sum of £—— now remaining in his hands, after deducting the sheriff's poundage for levying the same and other incidental charges, unto the petitioner for his own use, towards satisfaction of his said debt and costs, whenever a motion shall be made in the said court of Exchequer for that purpose. All which is nevertheless humbly submitted to your lordships' superior judgment.

— 1840.

25. Warrant to Attorney General to consent to an Order for Payment of the Money.

Victoria R.

Whereas we have been given to understand that there is remaining in the hands of — esquire, the present sheriff of the county of —, the sum of £——, for so much money levied by him on the several goods belonging to *C. D.* which were seized into our hands by virtue of an inquisition taken by virtue of a writ of special *capias utlagatum*, issued out of our court of Queen's Bench [or "Common Pleas," or "Exch. of Pleas"] against the said *C. D.* at the suit of *A. B.*, for the recovery of a debt due and owing to him from the said *C. D.* And whereas it further appears by reports, certificates, and other proper testimonies which the commissioners of our treasury have laid before us, that the debt due and owing to the said

A. B. from the said *C. D.*, together with the costs which he hath been put to in carrying on the said prosecution against the said *C. D.* for recovery of the said debt, doth exceed the said sum of £—— remaining in the hands of the said sheriff as aforesaid: To the end therefore that the said *A. B.* may have and receive some recompense and satisfaction towards his said debt, and the charges he hath been put to in suing for the same, our will and pleasure is, and we do hereby authorize and direct you to consent and agree that so much of the said sum of £—— as doth or shall remain in the hands of the said sheriff, after deducting the usual poundage for levying the same, be paid over to the said *A. B.* towards satisfaction of his said debt and costs accordingly, whenever he by his counsel learned in the law shall think fit to move our court of Exchequer for an order for that purpose; and we do also authorize and direct you to do or cause to be done such further or other acts as our said court of Exchequer upon such motion shall or may judge necessary for rendering our intentions herein most firm, valid, and effectual, and for so doing this shall be your warrant. Given at our court at St. James's, the —— day of ——, in the year of our Lord ——,

By her Majesty's command.

To our trusty and well beloved }
 Sir John Campbell, knight, }
 our attorney general.

26. *Order for Sheriff to pay the Money to Plaintiff.*

On the —— day of ——, 1840.

Between the Queen and *C. D.* outlawed at the suit of *A. B.* upon an outlawry. Upon the motion of Mr. ——, of counsel for *A. B.*, informing the court that the said *C. D.* having been prosecuted to an outlawry by the said *A. B.* in an action on promises [or "debt," as the action was], in her majesty's court of Queen's Bench [or "Common Pleas," or "Exch. of Plea,"] a writ of special *capias utlagatum* thereupon issued against the said defendant, under the seal of the said court, directed to the sheriff of ——; by virtue whereof the said sheriff seized by inquisition several goods and chattels belonging to the said defendant, appraised at £——: and further informing the court that the said writ of special *capias utlagatum* and inquisition being transcribed into this court, a writ of *venditioni exponas*, under the seal of this court, issued on the —— day of —— last, for selling the said goods, returnable the —— day of ——, at which time S. S. esq. the now sheriff of ——, returned the said writ, and certified that he had sold the said goods and chattels for the said sum of £——. It was therefore prayed by the said Mr. ——, that the said S. S. esq. or his under-sheriff, might forthwith pay to the said *A. B.* or his order the said sum of £—— towards satisfaction of the debt due from the said defendant to the said prosecutor; whereupon, and on hearing Sir —— (*the attorney general*) knight, her majesty's attorney general, who consented thereto on the behalf of her majesty, it is ordered by the court as prayed; the said sheriff first deducting out of the said £—— the usual poundage.

See 2 Chit. Ar. Pr. 933.]

27. *Subpœna.*

Victoria, [&c. as ante, 545,] to S. S. esquire, sheriff of our county of ——, or to his under-sheriff, greeting: We command you that, laying

aside all excuses, you obey, fulfil, and perform all and every matter and thing specified in an order of our court of Exchequer at Westminster, made in a cause in our said court depending between us and *C. D.* outlawed at the suit of *A. B.* upon an outlawry; the tenor of which order, for your fuller information therein, is hereto annexed; and this you are not to omit under the penalty of £100, which we shall cause to be levied upon your goods and chattels, lands and tenements, for our use, if you neglect this our command. Witness — (name of chief baron), at Westminster, the — day of —, in the year of our Lord —.

By the said order made the same day, and by the barons.

[See 2 Chit. Ar. Pr. 933.]

28. *Entry of Proceedings to Outlawry, where there was a Writ of Foreign Proclamation and Allocatur Exigent.—Recognizance of Bail in Error, to reverse Outlawry.*

[See Forms, Tidd's Forms, 49.]

29. *Declaration in Action against one of two Defendants, where the other has been outlawed.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, in the year of our Lord —.

— (to wit.) *A. B.* by *P. A.* his attorney, complains of *C. D.* who has been summoned to answer the said *A. B.* in an action on promises, [or as the form of action is]: And thereupon the said *A. B.* by *P. A.* his attorney, complains: For that whereas the said *C. D.* and one *E. F.* (which said *E. F.* by due course of law has been outlawed [or if a woman, say "waived"], at the suit of the said *A. B.* in this action, and still remains so outlawed, on —, were indebted &c. [state the promises and breach by both the defendants, naming them, and conclude], To the damage of the said *A. B.* of £—, and therefore he brings his suit &c.

[See 2 Chit. Ar. Pr. 934.]

30. *Non-pros for not declaring, after the Defendant's Appearance on an Exigi facias, in Q. B.*

On the — day of —, A.D. — (the day on which judgment is signed), in the — year of the reign of Queen Victoria.

— (to wit.) *A. B.* who brought a writ of exigi facias of our lady the queen before the queen herself, against *C. D.* late of —, in an action on promises (as the plea is), did not prosecute his writ aforesaid: Therefore on — he is thereupon in mercy &c. (a) and let the said *C. D.* go thereof without day &c. It is also considered [&c. conclude as in a judgment of non-pros, post, 606, 607.]

(a) The forms used to run thus: "Therefore he and his pledges to prosecute are thereupon in mercy &c. and let the names of the pledges be required &c. and the said *C. D.* go" &c.; but this, as to pledges, is no longer requisite.

SECTION II.

OUTLAWRY UPON FINAL PROCESS.

1. *Capias ad Satisfaciendum.*

[Same as usual, see ante, 190, &c. See also 2 Chit. Ar. Pr. 934, 935.]

2. *Writ of Exigi facias.*

[Same as the form, ante, 545, No. 2, but conclude it as in the ca. u. ante, 190, No. 1. See 2 Chit. Ar. Pr. 935. No writ of proclamation is necessary in this case.]

3. *Capias Utlagatum, &c.*

[Same as the forms, ante, 549, &c. See 2 Chit. Ar. Pr. 935. The forms of the other proceedings are the same as those in the preceding section, mutatis mutandis.]

SECTION III.

REVERSAL OF OUTLAWRY.

[See 2 Chit. Ar. Pr. 935; and the forms of writs of error coram nobis, for reversing an outlawry, ante, 143, &c.]

1. *Entry of Outlawry on the Roll, with Plea of no Proclamation, and Reversal of Outlawry thereon (a).*

On the — day of —, in the year of our Lord —
(the return of the capias or distringas.)

— (to wit.) Our lady the queen sent to her sheriff of — her writ close in these words, that is to say: Victoria, [&c. copy the exigent to the end, and then thus:] On which day, before our said lady the queen [or in C. P. "before the justices of our said lady the queen," or in Exch. "before the barons of her majesty's Exchequer"] at Westminster, S. S., sheriff of — aforesaid, has returned the writ aforesaid to him directed, as follows, that is to say, [copy the return of the exigent, and also the allocatur exigent, if any, and the return thereto, beginning each on a new line, and then proceed thus:] Afterwards, to wit, on — the — day of —, in the — year of the reign of our said lady the now queen (the return of the exigent or allocatur on which defendant was outlawed), before our said lady the queen or "the justices of our lady the queen," or in Exch. "before the barons of our lady the queen" at Westminster, comes the said C. D. by D. A. his attorney, and immediately says that no writ of our said lady the queen of proclamation, according to the form of the statute of the thirty-first year of the reign of the lady Elizabeth, late queen of England, in that case made and provided, issued against the said C. D. in the

(a) See the forms, Tidd's Forms, 62.

action aforesaid; whereby the outlawry aforesaid against the said C. D. in form aforesaid pronounced and had, is by the said statute void, and of no force or effect in law; and this the said C. D. is ready to verify, wherefore he prays judgment, and that the outlawry aforesaid against him the said C. D. in form aforesaid pronounced and had, may be revoked, annulled, and altogether held for nothing, and that the said C. D. may be restored to the common law of England, and to all things which he hath lost on occasion of the said outlawry: And the said C. D. according to the form of the statute in such case made and provided, finds sufficient bail, to wit, B. B. of — and T. B. of —. And now here at this day come the bail aforesaid, and each of them for himself severally acknowledges to owe to the said A. B. £—, which said several sums of £—, they grant, and each of them for himself grants, shall be made of their and each of their lands and chattels, and levied to the use of the said A. B. on condition that the said C. D. shall appear and answer the said A. B. to a new writ, by the said A. B. to be sued out for the cause in the said writ mentioned, and shall pay the condemnation which shall be recovered, if the said A. B. shall prosecute his suit within two terms next following: Whereupon the aforesaid writ being seen, and the file of writs of the return of the said writ of *exigi facias* being searched for the writ of proclamation aforesaid, it manifestly appears to the same court [or “justices,” or “barons”] now here that the allegation of the said C. D. above made for his discharge from the outlawry aforesaid, is true: Therefore it is considered that the outlawry aforesaid against the said C. D. in form aforesaid pronounced and had, be revoked, annulled, and altogether held for nothing, and that the said C. D. be discharged from the outlawry aforesaid, and be in nowise molested or aggrieved on that occasion, but go thereof without day &c. and that the said C. D. be restored to the common law of England, and to all things which he hath lost on occasion of the outlawry aforesaid &c.

[See 2 Chit. Ar. Pr. 938; see another form, on plaintiff's confession, Tidd's Forms, 54; also a form of plea that defendant was beyond sea at the time of the exigent awarded, and entry of reversal thereon, *id.* 54.]

2. Supersedeas upon Reversal of Outlawry, for want of Proclamation.

Victoria, [&c. *as ante*, 545, No. 2,] to the sheriff of —, greeting: Whereas by our writ we lately commanded you that you should not omit by reason of any liberty in your county, but by the oath of honest and lawful men [&c. *recite the special cupias utlagatum*, to the words, “to do and receive what our said court should consider of him in that behalf:”] And because it sufficiently appears to us [or in C. P. “to our justices,” or in Exch. “to the barons”] of record in our said court that the outlawry aforesaid is reversed for want of proclamation, according to the form of the statute in that case made and provided; and that the said C. D. thereupon came here into our said court, and found sufficient bail to answer to the said A. B. upon a new writ to be brought by the said A. B. within two terms next after the reversal of the outlawry aforesaid, and to satisfy the condemnation, if the said C. D. should be convicted: Therefore we command you, that if you have taken the goods and chattels of the said C. D. by virtue of the writ aforesaid, you cause them to be redelivered to the said C. D. without delay: We also command you, that you wholly cease from taking the said C. D., attaching, imprisoning, or anywise molesting him on the occasion aforesaid; and if you have taken him on that occasion, and no other, then that you cause him to be set at

liberty without delay, at your peril. Witness — (name of chief justice, or chief baron), at Westminster, the — day of —, in the year of our Lord —.

3. *Supersedeas by consent of the Plaintiff's Attorney, on the Defendant's putting in Bail.*

Victoria, [*&c. as ante, 545, No. 2,*] to the sheriff of —, greeting: Whereas by our writ we lately commanded you that [*&c. proceed as in the preceding form, to the words "consider of him in that behalf:"*] And because the said *C. D.*, by the assent of the attorney of the said *A. B.* came into our said court, and found sufficient bail to answer to the said *A. B.* of the plea aforesaid, and to satisfy the said *A. B.* all damages, costs, and charges in that behalf to be recovered, if it should happen that the said *C. D.* should be convicted in the plea aforesaid, and did not satisfy the said damages, costs, and charges, or render himself to the prison of the marshal of the Marshalsea of our court before us [*or in C. P. or Exch. "to our prison of the Fleet"*], on that occasion: Therefore we command you [*&c. conclude as in the preceding form.*]

See 2 Chit. Ar. Pr. 939.]

CHAPTER III.

REMOVAL OF PRISONERS INTO THE CUSTODY OF THE MARSHAL
OR WARDEN.1. *Habeas Corpus cum Causâ, in Q. B.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the marshal of our prison of the Marshalsea, before us [or "to the warden of our prison of the Fleet," or "to the sheriff of —," (a)] greeting: We command you that you have the body of C. D. detained in our prison under your custody, as it is said, under safe and secure conduct, together with the day and cause of

(a) The following are directions of writs of habeas corpus and certiorari to different inferior courts. For the direction of writs to corporate bodies, see now the schedules A. and B. in the 5 & 6 Will. 4, c. 76.

Mayor's Court of London. To the mayor, aldermen, and sheriffs of the city of London.

Sheriff's court. To the sheriffs of the city of London.

Liberty of St. Martin's-le-grand. To the steward of the dean and chapter of the collegiate church of St. Peter, Westminster, of the court of their liberty or precincts of St. Martin-le-grand in London, and to the constables there.

County court. To the sheriff of —

Palace court. To the judges of our palace court at Westminster, and to each of them.

Borough court of Southwark. To the steward of the court of the liberty of the mayor and commonalty and citizens of the city of London, of their town and borough of Southwark, in the county of Surrey, and to the bailiff of the same liberty.

Whitechapel court. To the steward of our court of record, within the manors of Stepney and Hackney, in the county of Middlesex, the hamlets and liberties of the same, and also to the prothonotary of the same court.

Canterbury. To the steward of the liberty of —, by divine providence archbishop of Canterbury, in the court of his palace, within the city of Canterbury.

Ely. To our justices of the bishop of

Ely, assigned to hold pleas within the isle of Ely, and to the steward of the same bishop, within the liberties of the isle aforesaid, and to every of them. *Or thus:—*

To our trusty and well-beloved —, our chief justice, assigned to hold the sessions of pleas, within the liberty or royal franchise of the honourable and right reverend father in God —, by divine permission lord bishop of Ely, within the isle of Ely in the county of Cambridge, and to —, chief bailiff of the said bishop within the liberties of the said isle, and to each of them.

Kingston-upon-Thames. To the bailiffs and steward of our court of our town of Kingston-upon-Thames; and, in the absence of the said steward, to the bailiffs and recorder of the same town, or any two of them.

Taunton. To the bailiffs of the right reverend father in Christ —, by divine permission lord bishop of Winchester, of his liberty of Taunton and Taunton Dean, in the county of Somerset.

Wells. To the steward or bailiff of our court of pleas, granted to the reverend father in Christ —, lord bishop of Bath and Wells, held at the Guildhall within the city and borough of Wells, in the county of Somerset.

his being taken and detained, by whatsoever name he may be called or known, before our right trusty and well-beloved (*name of chief justice*), our chief justice assigned to hold pleas in our court before us [*or in C. P.* "before our right trusty and well-beloved Sir — (*name of chief justice in C. P.*), knight, our chief justice of the Bench," *or in Exch.* "before the honourable sir — chief baron of our Exchequer"], at his chambers in Roll's Garden, [*or "at his house, situate, &c."*] immediately after the receipt of this writ, to do and receive all and singular those things which our said chief justice [*or "chief baron,"*] shall then and there consider of him in this behalf; and have there [*or in Q. B.* "there then"] this writ. Witness — (*name of chief justice, or in Exchequer chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 941.]

2. Habeas Corpus ad Respondendum, in Q. B. or C. P.

Victoria, [*&c. as supra, No. 1*]: We command you that you have the body of *C. D.* detained in our prison under your custody, as it is said under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name he may be called or known, before us [*or in C. P.* before our justices"] at Westminster, on —, to answer *A. B.* in an action upon promises [*or as the cause of action may be*], and further to do and receive all and singular those things which our said court before us [*or in C. P.* "before our justices"] shall then and there consider of him in this behalf, and have you there [*or in Q. B.* "there then"] this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

[See 2 Chit. Ar. Pr. 942.]

3. Habeas Corpus ad Satisfaciendum.

Victoria, [*&c. as supra, No. 1*]: We command you that you have before us [*or in C. P.* "before our justices," *or in Exch.* "before the barons of our Exchequer"] at Westminster, on —, (a) the body of *C. D.* detained in our prison, under your custody, as we are informed, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name he may be called in the same, to satisfy *A. B.* as well a certain debt [*&c. as in the ca. sa. ante, 190, No. 1: or in covenant, assumpsit, &c.* "the sum of £—,"] which in our court before us [*or "our justices," or "the barons"*] at Westminster were awarded to the said *A. B.* for [*&c. as in the forms of ca. sa. ante, 190, &c. to the words*] whereof the said *C. D.* is convicted; and further to do [*&c. conclude as in the preceding form.*]

[See 2 Chit. Ar. Pr. 942.]

(a) *Semble.* The writ need not name a day certain, *Furnival v. Stringer*, 3 Bingh. N. C. 96.

CHAPTER IV.

REMOVAL OF CAUSES FROM INFERIOR COURTS.

SECT. I.—*Removal by Habeas Corpus.*

II.—*Removal by Certiorari.*

III.—*Removal by Rule or Order.*

SECTION I.

BY HABEAS CORPUS.

1. *The Writ of Habeas Corpus (a).*

[*Same as ante*, 561.]

[*See 2 Chit. Ar. Pr.* 944.]

2. *Rule or Order for Procedendo, to compel Defendant to put in Common Bail (b).*

B. } Unless the defendant shall put in common bail, within four days
v. } [*in term, or "six" days in vacation*] next after notice of this rule
D. } given to him or his attorney, let a procedendo issue for the plaintiff.
Dated the — day of —.

[*See 2 Chit. Ar. Pr.* 944.]

3. *Common Bail-piece in Q. B.*

In the Queen's Bench.

— term, in the — year of the reign of
Queen Victoria.

— (*venue*) (to wit.) C. D. is delivered to bail, on a habeas corpus, to

John Doe, of London, yeoman,
and

Richard Roe, of the same place, yeoman,

at the suit of *A. B.*

D. A. attorney.

[*See 2 Chit. Ar. Pr.* 948.]

(a) See forms of return thereto, that the defendant was taken, &c. on a plaint levied in the sheriff's court of London, Tidd's Forms, 6th ed. 158.

(b) Imprisonment on mesne process in inferior courts being now abolished by 1 & 2 Vict. c. 110, s. 1, the

defendant need not in any case put in special bail in the court above; filing common bail is sufficient. The forms as to putting in special bail on removal, are therefore omitted from this edition.

4. *The like, in C. P.*

In the Common Pleas.

— term, in the — year of the reign of
Queen Victoria.— (*venue*) (to wit.) Habeas corpus for *C. D.* at the suit of *A. B.*
returnable on —.The bail are, *John Doe*, of London, yeoman,
and*Richard Roe*, of the same place, yeoman.*I. K.* attorney.5. *Notice of Bail-piece being filed.*In the Q. B. [*or "C. P."*]*A. B.* plaintiff and *C. D.* defendant.Take notice, that common bail was this day filed at the chambers of
Mr. Justice —, in Rolls' Garden, [*or in C. P. "at the master's office,*
in —, London."] Dated the — day of — 1840.To Mr. *P. A.* plaintiff's attorney
[*or "agent."*]*D. A.* defendant's attorney
[*or "agent."*]6. *Writ of Procedendo.*

Victoria, [*&c. as in the direction of the habeas corpus, see ante, 561, No. 1,*] greeting: Although we lately by our writ commanded you, that you should have the body of *C. D.* detained in our prison under your custody, as it was said, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name the said *C. D.* might be called in the same, before our right trusty and well-beloved (*name of chief justice*), our chief justice assigned to hold pleas in our court before us, [*or in C. P. "before the Right Honourable —, knight, our chief justice of the Bench," or in the Exch. "before the Honourable Sir —, knight, chief baron of our Exchequer,"*] at his chambers [*or "house," &c. as in habeas corpus*] immediately after the receipt of that writ, to do and receive all and singular those things which our said chief justice [*or "chief baron"*] should then and there consider of him in that behalf; yet we, being now moved by certain causes in our court before us, [*or in Exch. "before the barons of our said Exchequer," or in C. P. thus: "yet for certain causes in this behalf specially moving our justices of the Bench aforesaid, we"*] command you and every of you, that in all complaints and suits against the said *C. D.* at the suit of *A. B.* in our court before you, or any of you, levied or affirmed, or before you or any of you now depending-undetermined, you proceed with what speed you can, in such manner, according to the law and custom of England, as you shall see proper; our said writ to you thereupon before directed to the contrary thereof in anywise notwithstanding. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 948.*]7. *Declaration in Q. B. after Removal.*

In the Queen's Bench.

On the — day of —, A. D. —, as yet
of — term, — Victoria.— (to wit). *A. B.* complains of *C. D.* being in the custody of the
marshal of the Marshalsea of our lady the now queen before the queen

herself, in an action on promises (*or as the plea is*) : For that [*&c. proceed as usual*].

[*See 2 Chit. Ar. Pr. 949.*]

8. *The like, in C. P.*

In the Common Pleas.

On the — day of —, A. D. —, as yet of —
term, — Victoria.

— (to wit). *C. D.* was attached [*or “summoned”*] to answer *A. B.* in an action on promises (*or as the plea is*) and thereupon the said *A. B.*, by *P. A.* his attorney, complains : For that [*&c. conclude as usual*].

9. *The like, in Exchequer.*

In the Exchequer of Pleas.

On the — day of —, A. D. —, as yet of —
term, — Victoria.

— (to wit). *A. B.* a debtor to our lady the queen, cometh before the barons of her majesty's Exchequer on the — day of —, in this same term, and by *P. A.* his attorney complains by bill of *C. D.* present here in court the same day, in an action on promises [*&c. or as the plea is*] : For that [*&c. proceed as usual*].

SECTION II.

BY CERTIORARI.

1. *The Writ of Certiorari (a).*

Victoria, [*&c. as ante, 561, No. 1, and see the note there,*] greeting : We being willing for certain causes to be certified of a plaint levied in our court before you against *C. D.* at the suit on *A. B.* in an action on promises, (*or as the plea is,*) command you, that you send to us [*or in C. P. “to our justices,” or in Exch. “to the barons of our Exchequer”*] at Westminster, on — (*b*), the plaint aforesaid, with all things touching the same, as fully and entirely as it remains in our court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done. Witness — (*name of chief justice, or in Exch. the name of chief baron*), at Westminster, the — day of —, in the year of our Lord —.

[*See 2 Chit. Ar. Pr. 944, 946.*]

2. *Return thereto.*

[*See a form, Tidd's Forms, 147.*]

(*a*) See the form of a certiorari to the mayor &c. of London, to remove bill, original, and attachment, *Tidd's Forms*, 148; and of the return thereto of proceedings in the mayor's court, by foreign attachment, *id.* Also the form of a certiorari to the mayor &c.

of Bristol, to remove all plaints and attachments, *id.* 151. The like, to remove plaint from the Common Pleas at Lancaster, *id.*

(*b*) See as to the return, 2 *Chit. Ar. Pr.* 947.

3. *Rule or Order for Procedendo.*

[See the form, ante, 563, No. 2.]

4. *Common Bail, &c.*

[See the form, ante, 563, No. 3.]

5. *Writ of Procedendo(a).*

Victoria, [&c. as in the certiorari, see ante, 561, No. 1.] Although we being willing for certain causes to be certified of a plaint levied in our court before you against *C. D.* at the suit of *A. B.* in an action on promises, (or as the plea is,) lately by our writ commanded you, that you should send to us at Westminster, [or in *C. P.* "to our justices at Westminster," or in the *Exch.* "to the barons of our Exchequer at Westminster,"] on a certain day now past, the plaint aforesaid, with all things touching the same, as fully and entirely as it remained in our court before you, by whatsoever names the parties might be called therein, together with that writ, that we might further cause to be done thereupon what of right we should see fit to be done; yet we being now moved by certain causes in our court before us, [&c. as ante, 564, No. 6,] command you and every of you that in the plaint aforesaid you proceed [&c. conclude as ante, 564, No. 6.]

6. *Affidavit to obtain a Certiorari on 19 Geo. 3, c. 70, s. 4, for having Execution upon a Judgment of an Inferior Court(b).*In the *Q. B.* [or "*C. P.*" or "*Exch. of Pleas.*"]

P. A. of —, gentleman, attorney for *A. B.*, in a certain suit hereinafter mentioned, and *S. S.* of —, serjeant-at-mace, [&c. according to his office,] severally make oath and say, and first this deponent *P. A.* for himself saith, that on or about — last past a certain suit was commenced by the said *A. B.* against *C. D.* in (state the title of the court) the same being a court of record, for the amount of goods sold and delivered by the said *A. B.* to the said *C. D.* and at his request (or as the cause of action may be); and such proceedings were had in the said suit, that afterwards, on — last past, final judgment was given for the said *A. B.* against the said *C. D.* for £—, (describe the judgment,) which is still in force and unsatisfied; and this deponent further saith, that he thereupon sued out a certain attachment against the person of the said *C. D.*, and also a certain warrant against his goods and chattels founded on the said judgment, and for the purposes of having execution thereof, and delivered the same to the other deponent *S. S.* to execute: And this other deponent *S. S.* for himself saith, that upon the said attachment and warrant being by the said other deponent delivered unto this deponent as such serjeant-at-mace as aforesaid to be executed, he this deponent made diligent search and inquiry after the person and effects of the said *C. D.*,

(a) See the form of a procedendo on certiorari to the mayor's court of London, Tidd's Forms, 6th ed. 162.

(b) See the form of affidavit for certiorari on stat. 32 Geo. 3, c. 68, to

remove the transcript of a judgment from the Common Pleas at Lancaster, Tidd's Forms, 6th ed. 153. See 2 Chit. Ar. Pr. 947.

but that neither the person of the said *C. D.* nor any effects to him belonging, were to be found within the jurisdiction of the said court: And this deponent *P. A.* further saith, that he hath heard and verily believes that the said *C. D.* is now residing [or "that effects of the said *C. D.* are now to be found"] in the county of —.

The above-named deponents, *P. A.* and
S. S. were sworn at [before a judge or
 commissioner, as ante, 207.]

P. A.
S. S.

7. Rule thereon(a).

On — the — day of —, in the — year of the
 reign of Queen Victoria.

Upon reading the affidavit of *P. A.* and *S. S.* it is ordered that a writ of certiorari do issue to remove a certain cause between *A. B.* and *C. D.* from the court of —, with a transcript of the record of the judgment thereupon obtained in the said court, into this court, pursuant to the statute of the 19th of the late King George the Third, chapter 70, in order that the said *A. B.* may have execution; and that the masters of this court do receive and file the same. Upon the motion of —.

By the Court.

8. Certiorari thereon.

[The form, ante, 565, No. 1, may be readily made applicable, mutatis mutandis; see the forms, *Tidd's Forms*, 152, 154.]

SECTION III.

BY RULE OR ORDER.

1. Affidavit in order to obtain leave of Court to issue out Execution under 4 & 5 Will. 4, c. 62, s. 31.

In the Common Pleas at Lancaster.

Between *A. B.* plaintiff and *C. D.* defendant.

E. C. of M—, in the county of L—, clerk to *P. A.* of the same place, attorney for the above-named plaintiff in this cause, maketh oath and saith, that he this deponent has made diligent search for the above-named defendant *C. D.* since the verdict was obtained and execution issued herein, and is informed and verily believes that the said defendant resides out of the said county of L—, and saith that he this deponent is further informed and believes that the defendant has removed into the county of C— for the purpose of evading the damages and costs in this action.

E. C.

Sworn [&c. as ante, 207.]

[See 2 Chit. Ar. Pr. 952, 953.]

(a) The rule is absolute in the first instance, *Knowles v. Lynch*, 2 Dowl. P. C. 623.

2. *Certificate in such case, of Prothonotary of C. P. at Lancaster, of signing Final Judgment.*

In the Common Pleas at Lancaster.

Between *A. B.* plaintiff and *C. D.* defendant.

In an action of [debt on bail-bond.]

I *J. F.* deputy prothonotary of the said court, do hereby certify that final judgment was signed in this cause on the — day of —, A. D. —, for a debt of £—, and for £— damages and costs. Dated the — day of —, 1840. *J. F.*

3. *Affidavit of Signature thereto.*

T. C. of —, in the county of —, —, maketh oath and saith, that he did see the above-named *J. F.* set and subscribe his name to the above-written certificate. *T. C.*

Sworn [&c. *as ante*, 207.]

4. *Rule thereon.*

In the Queen's Bench.

The — day of —, 1840.

A. B. } Upon reading the affidavit of *E. C.* and the affidavit of *T. C.*,
v. } and the paper-writing thereto annexed, it is ordered, that the
C. D. } plaintiff be at liberty to issue a writ or writs of execution out of this court against the defendants. Upon the motion of Mr. —.

By the Court.

5. *Ca. sa. thereon.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of Cheshire, greeting: According to the statute in that case made and provided, we command you, that you take *C. D.* if he may be found in your bailiwick, and him safely keep, so that you may have his body before us [or in *C. P.* "before our justices of the bench," or in *Exch.* "before the barons of our Exchequer"] at Westminster, immediately after the execution hereof, to satisfy *A. B.* as well a certain debt of £—, which the said *A. B.* lately in the Court of Common Pleas in the county palatine of Lancaster, by the consideration and judgment of that court, recovered against him, as also £—, which were adjudged to the said *A. B.* in and by the said Court of Common Pleas of the county palatine of Lancaster for his damages which he sustained as well on occasion of the detaining the said debt as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as by a certificate from *J. F.*, the deputy prothonotary of the said Court of Common Pleas of the county palatine of Lancaster, to us appears, together with interest upon the said several sums of £—, and £—, at the rate of £4 per centum per annum, from the — day of —, A. D. —, on which day the judgment aforesaid was entered up, [or if entered up before the 1st October, 1838, say "from the 1st day of October, A. D. 1838," and omit the words "on which day the judgment aforesaid was entered up,"] and have you there this writ. Witness (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

6. *Affidavit for obtaining an Order to remove a Judgment of an inferior Court of Record under 1 & 2 Vict. c. 110, s. 22.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

P. A. of —, gentleman, maketh oath and saith, that he hath been employed by A. B. to make application on behalf of the said A. B. for the removal into this honourable court of a judgment obtained by the said A. B. against one C. D. in the court of [here state the name of the court, and where and before holden]: and by which judgment the said A. B. recovered against the said C. D. the sum of £— for his damages which he had sustained as well on occasion of the breach of a certain promise theretofore and within the jurisdiction of the said court of —, made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended, (or as the form of action may be, see the forms of judgments, ante, 102 to 105,) as by the record of the said judgment now in the possession of this deponent, and ready to be produced to this honourable court, more fully appears: And this deponent further saith, that the said judgment is in full force, and wholly due and unsatisfied, and that the seal annexed to the said record thereof is the seal of the said court of —, and that the signature thereunto affixed is the signature of the proper officer of the said court of —: And this deponent further saith, that the said court of — is an inferior court of record, and that on the 16th day of August, A. D. 1840 [and at the time of recovering the said judgment] a barrister of not less than seven years standing acted therein as judge, [or "assessor," or "assistant,"] in the trial of causes.

Sworn [&c. ante, 207.]

P. A.

7. *The same to remove a Rule or Order of such Court.*

[This affidavit may be like the above, except that the rule should be described as "a rule of the court of (here insert the style of the court), entitled [&c. as the case may be], whereby the sum of £— was ordered to be paid by C. D. to A. B., together with the costs of the said rule, which said costs were afterwards, to wit, on the — day of —, A. D. —, taxed and allowed by the said court at the sum of —."]

8. *Order thereon for Removal under 1 & 2 Vict. c. 110, s. 22.*

A. B. } Upon reading the affidavit of A. A., gentleman, and upon pro-
v. } duction of the record of a judgment obtained by A. B. against
C. D. } C. D. in the court of —, in an action on promises for £—
damages, (or as the case may be,) such record being under the seal of the
said court of —, and signature of the proper officer thereof, [or if a rule
say "upon production of a rule of the court of —, whereby, &c.,] I
do order and direct that the said judgment [or "rule"] be removed into
her majesty's Court of Queen's Bench, [or "C.P." or "Exch. of Pleas,"]
pursuant to the statute in such case made and provided. Dated the —
day of —, A. D. 1840. (Judge's signature.)

9. *Writ of Fi. fa. on Judgment of inferior Court in an Action of Assumpsit removed into a superior Court, under 1 & 2 Vict. c. 110, s. 22.*

Victoria, by the grace of God of the united kingdom of great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting:

(a) The affidavit should be entitled in the court, but not in the cause, there being no cause in the superior court until removal.

We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made £—, which *A. B.* lately in [*insert the style of the court*], by the judgment of the said court, recovered against the said *C. D.* for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, and which judgment was afterwards, on the — day of —, in the year of our Lord —, removed into our court before us [*or in C. P. "before our justices of the bench," or in Exch. "before the barons of our Exchequer"*] at Westminster, by virtue of an order of our said court before us [*or in C. P. "before our said justices," or in Exch. "before the said barons"*] at Westminster, [*or "of —, one of the justices (or "barons") of our said court at Westminster," as the case may be,*] in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said order, and upon the said removal, were, on the — day of —, in the year of our Lord —, taxed and allowed by our said court at Westminster, at the sum of £—: And we further command you, that of the said goods and chattels of the said *C. D.* in your bailiwick, you further cause to be made the said sum of £—, [*the costs of removal,*] together with interest on the said two several sums of £— and £—, at the rate of £4 per centum per annum, from the said — day of —, in the year of our Lord — [*the day on which the costs of removal were taxed*]: and that you have that money, with such interest as aforesaid, before us [*or in C. P. "before our said justices," or in Exch. "before the said barons"*] at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.* for his damages aforesaid, and for costs and interest as aforesaid: and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf: and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices," or in Exch. "to the said barons"*] at Westminster, immediately after the execution thereof, and have there then this writ. Witness — (*name of chief justice or chief baron*), at Westminster, on the — day of —, in the year of our Lord —.

10. *The like, on an Order for Payment of Money.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith: We command you that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made £—, which lately in [*insert the style of the court*], by a rule of the said court, entitled &c. [*as the case may be*], were by the said court ordered to be paid by the said *C. D.* to *A. B.*, and which rule was afterwards on the — day of —, in the year of our Lord —, removed into our court before us [*or in C. P. "before our justices of the bench," or in Exch. "before the barons of our Exchequer"*] at Westminster, by virtue of an order of our said court before us [*or in C. P. "before our said justices," or in Exch. "before the said barons"*] at Westminster, [*or "of — one of the justices (or "barons") of our said court before us (or in C. P. "before our said justices," or in Exch. "before the said barons") at Westminster," as the case may be,*] in pursuance of the statute in that case made and provided; and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were, on the — day of — in the year of our Lord —, taxed and allowed by our said court before us [*or in C. P. "before our said justices," or in Exch.*

"before the said barons"] at Westminster, at the sum of £——. And we further command you that of the said goods and chattels of the said C. D. in your bailiwick, you further cause to be made the said sum of £—— [the costs of removal], together with interest on the said two several sums of £—— and £——, at the rate of £4 per centum per annum from the said —— day of —— [the day on which the costs of removal were taxed], and that you have that money, with such interest as aforesaid, before us [or in C. P. "before our said justices," or in Exch. "before the said barons"] at Westminster, immediately after the execution hereof, to be rendered to the said A. B. for the said monies by the said rule first above-mentioned ordered to be paid by the said C. D. to the said A. B., and for costs and interest as aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [or in C. P. "to our said justices," or in Exch. "to the said barons"] at Westminster immediately after the execution thereof, and have you there then this writ. Witness —— (name of chief justice or chief baron), at Westminster, on the —— day of ——, in the year of our Lord ——.

11. The like on an Order for Payment of Money and Costs.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting: We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made £——, which lately in [insert the style of the court], by a rule of the said court, entitled &c. [as the case may be] were by the said court ordered to be paid by the said C. D. to A. B., and also £—— for the costs of the said rule by the said court also ordered to be paid by the said C. D. to the said A. B., which said rule was afterwards on the —— day of ——, in the year of our Lord ——, removed into our court before us [or in C. P. "before our justices of the bench," or in Exch. "before the barons of our Exchequer"] at Westminster, by an order of our said court at Westminster, [or "of ——, one of the justices (or "barons") of our said court at Westminster," as the case may be,] in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were, on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said court at Westminster at the sum of £——, and we further command you that of the said goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £—— [the costs of removal], together with the interest on the said three several sums of £——, and £——, and £——, at the rate of £4 per centum per annum, from the said —— day of ——, in the year of our Lord —— [the day on which the costs of removal were taxed], and that you have that money, with such interest as aforesaid, before us [or in C. P. "before our said justices," or in Exch. "before the said barons,"] at Westminster immediately after the execution hereof, to be rendered to the said A. B. for the monies by the said rule first above mentioned ordered to be paid by the said C. D. to the said A. B., and for costs and interest as aforesaid: and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [or in C. P. "to our said justices," or in Exch. to the said barons"] at Westminster immediately after the execution thereof, and have then there this writ. Witness —— (name of chief justice or

chief baron), at Westminster, on the — day of —, in the year of our Lord —.

12. *Writ of Elegit on a Judgment of an Inferior Court in an Action of Assumpsit removed into a Superior Court under 1 & 2 Vict. c. 110, s. 22.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas *A. B.*, lately in [*insert the style of the court*] by the judgment of the said court, recovered against *C. D.* the sum of £—, which in the said court were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.*, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record: And whereas the said judgment was afterwards on the — day of —, in the year of our Lord —, removed into our court before us [*or in C. P. "before our justices of the bench," or in Exch. "before the barons of our Exchequer"*] at Westminster, by virtue of an order of the said court at Westminster [*or "of —, one of the justices (or "barons") of our said court, at Westminster," as the case may be*], in pursuance of the statute in that case made and provided, and the costs attendant upon the application for the said order and upon the said removal were afterwards, on the — day of —, in the year of our Lord —, taxed and allowed by our said court at Westminster, at the sum of £—. And afterwards the said *A. B.* came into our said court before us [*or in C. P. "before our said justices," or in Exch. "before the said barons"*] at Westminster, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.* or any person in trust for him, was seised or possessed of, on the said — day of — in the year of our Lord — aforesaid (*the day on which the costs of removing the judgment were taxed*), or any time afterwards, or over which the said *C. D.*, on the said — day of — (*the day on which the costs of removing the judgment were taxed*), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages aforesaid and the said costs so taxed and allowed by the said court before us [*or in C. P. "before our said justices," or in Exch. before the said barons"*] at Westminster as aforesaid, together with interest upon the said two several sums of £— and £—, at the rate of £4 per centum per annum, from the — day of — aforesaid (*the day on which the costs of removing the judgment were taxed*) shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.* or any one in trust for him was seised or possessed of, on the said — day of — (*the day on which the costs of removing the judgment were taxed*), or at any time afterwards, or over which

the said *C. D.* on the said — day of — (*the day on which the costs of removing the judgment were taxed*), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels of the said *A. B.* as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages aforesaid, and the said costs so taxed and allowed by the said court before us [*or in C. P. "before our said justices," or in Erch. "before the said barons"*] at Westminster as aforesaid, and interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in C. P. to our said justices," or in Erch. "to the said barons"*] at Westminster, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of — in the year of our Lord —.

13. *The like, on an Order for Payment of Money.*

Victoria [&c.], to the sheriff of —, greeting: Whereas lately in [*insert the style of the court*], by a rule of the said court, entitled &c. [*as the case may be*], the sum of £— were by the said court ordered to be paid by *C. D.* to *A. B.*, and whereas the said rule was afterwards, on the — day of —, in the year of our Lord —, removed into our court before us [*or in C. P. "before our justices of the bench," or in Erch. "before the barons of our Exchequer"*] at Westminster, by virtue of an order of our said court before us at Westminster [*or "of —, one of the justices of our said court before us at Westminster," as the case may be*], in pursuance of the statute in that case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were afterwards, on the — day of —, in the year of our Lord —, taxed and allowed in our said court before us [*or in C. P. "before our said justices," or in Erch. "before the said barons"*] at Westminster at the sum of £—, and afterwards the said *A. B.* came into our said court before us [*or in C. P. "before our said justices," or in Erch. "before the said barons"*] at Westminster, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said — day of —, in the year of our Lord — (*the day on which the costs of removing the rule were taxed*), or at any time afterwards, or over which the said *C. D.* on the said — day of — (*the day on which the costs of removing the rule were taxed*), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof to him and to his assigns, until the said two several sums of £— and £—, together with interest on the said two several sums of £— and £—, at the rate of four pounds per centum per annum, from the said — day of — (*the day on which the costs of removing the rule were taxed*), shall have been levied. Therefore we command you, that without

delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of on the said — day of — (*the day on which the costs of removing the rule were taxed*), or at any time afterwards, or over which the said *C. D.* on the — day of — (*the day on which the costs of removing the rule were taxed*), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £— and £—, together with interest as aforesaid, shall have been levied, and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices," or in Erch. "to the said barons"*] at Westminster, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

14. *The like, on an Order for Payment of Money and Costs.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas lately in [*insert the style of the court*], by a rule of the said court, entitled, &c. [*as the case may be*], the sum of £—, was by the said court ordered to be paid by *C. D.* to *A. B.*, together with the costs of the said rule, which said costs were afterwards, on the — day of —, in the year of our Lord —, taxed and allowed by the said court at the sum of £—: And whereas the said rule was afterwards, on the — day of —, in the year of our Lord —, removed into our court before us [*or in C. P. "before our justices of the bench," or in Erch. "before the barons of our Exchequer"*] at Westminster, by virtue of an order of our said court at Westminster [*or "of —, one of the justices (or "barons") of our said court at Westminster," as the case may be*], in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order, and upon the said removal, were afterwards on the — day of —, in the year of our Lord —, taxed and allowed in our said court before us [*or in C. P. "before our said justices," or in Erch. "before the said barons"*] at the sum of —, and afterwards the said *A. B.* came into our said court before us [*or in C. P. "before our said justices," or in Erch. "before the said barons"*] at Westminster, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said — day of — [*the day on which the costs of removing the rule were taxed*], or at any time afterwards, or over which the said *C. D.* on the said — day of — [*the day on which the costs of removing the*

rule were taxed], or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums of £—— and £—— and £——, together with interest upon the said three several sums of £—— and £—— and £——, at the rate of £4 per centum per annum, from the said —— day of —— [*the day on which the costs of removing the rule were taxed*], shall have been levied. Therefore we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person in trust for him was seised or possessed of, on the said —— day of —— [*the day on which the costs of removing the rule were taxed*], or at any time afterwards, or over which the said *C. D.* on the said —— day of —— [*the day on which the costs of removing the rule were taxed*], or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums of £—— and £—— and £——, together with interest as aforesaid, shall have been levied; and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices," or in Exch. "to the said barons"*] at Westminster immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness —— (*name of chief justice or chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

15. *Ca. sa. on Rule or Order of Inferior Court of Record, removed under 1 & 2 Vict. c. 110, s. 22.*

[*This may readily be framed from the preceding forms and those ante, 190 to 200.*]

CHAPTER V.

CLAIM OF CONUSANCE.

[*See 2 Chit. Ar. Pr. 954. See the form, 12 East, 15.*]

CHAPTER VI.

CHANGING THE VENUE.

1. *Affidavit for Rule or Order to change the Venue.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B.
agt.
C. D.

C. D. of —, [tailor,] the above-named defendant, maketh oath and saith, that the plaintiff's cause of action (if any) arose in the county of — (the county to which the venue is sought to be changed), and not in the county of — (the venue laid in the declaration), or elsewhere out of the county of —.

C. D.

Sworn [&c. as ante, 207.]

[See 2 Chit. Ar. Pr. 956.]

2. *Rule thereon in Term Time.*

On the — day of — A.D. —.

A. B. } Upon reading the affidavit of C. D. and the declaration in
agt. } this cause, it is ordered that the venue in this action be laid
C. D. } in the county of —; but it is further ordered that the plaintiff be at liberty to discharge this rule, upon producing counsel's [or "serjeant's"] hand to one of the masters of this court, and undertaking at the trial of this cause to give material evidence of some matter in issue arising in the county of —, where the cause of action was first laid. Upon the motion of Mr. —.

[See 2 Chit. Ar. Pr. 956.]

3. *Judge's Order thereon, in Vacation.*

B. } Upon reading the affidavit of C. D. and the declaration in this
v. } cause, I order that the venue in this action be laid in the county
D. } of —. Dated this — day of —, 1840.

(Judge's signature.)

[* If the venue be changeable only under special circumstances, there must be a summons. See 2 Chit. Ar. Pr. 956.]

4. *Rule to retain the Venue, upon the usual Undertaking in Q. B.*

On — the — day of —, 1840.

A. B. } Upon reading the rule [or "order"] made in this cause on
ats. } the — day of —, A.D. 1840, and upon the plaintiff hereby
C. D. } undertaking at the trial of this cause to give material evidence

of some matter in issue, arising in the county of —, (*the county where the action was first laid,*) it is ordered that the said rule be discharged. Upon the motion of Mr. —.

By the Court.

[See 2 Chit. Ar. Pr. 962.]

5. *The like, in C. P.*

B. } Upon reading a rule made in this cause on — last, and on
v. } hearing counsel on both sides, it is ordered that the said rule be
D. } discharged; the plaintiff hereby by his counsel undertaking to give
material evidence in — at the trial of this cause.

By the Court.

CHAPTER VII.

STRIKING OUT COUNTS, &c.

[See 2 Chit. Ar. Pr. 964.]

CHAPTER VIII.

CONSOLIDATING ACTIONS.

1. *Consolidation Rule, in Q. B. or Exchequer (a).*

B. v. D. } Upon reading the rule made in this cause on — the
Same v. E. } — day of —, A.D. 1840, the affidavit of D.A. and others,
Same v. F. } and no cause being shown to the contrary, it is ordered,
that upon the submission of the defendants E. and F. to be bound and
concluded in the actions brought against them, by the fate of such ver-
dict as shall be found in the action brought against the defendant D., all
further proceedings in the actions brought against the defendants E. and
F. be stayed, until this court shall otherwise order: And if a verdict shall
be given in the action against the defendant D. in favour of the plaintiff,
to the satisfaction of the lord chief justice, or other judge before whom the
said cause shall be tried, that then no writ of error shall be brought upon
the judgment to be entered on the said verdict, nor shall any bill in equity
be filed, to be relieved against such verdict.

By the Court.

[See 2 Chit. Ar. Pr. 967, 968.]

(a) See the next form, which seems to be the proper one to be now adopted.

2. *The like, in another Form (a).*

*B. v. D. } It is ordered, that all proceedings in the last-mentioned
Same v. E. }* cause be stayed, until the trial of the first-mentioned cause, the defendant in the last-mentioned action hereby undertaking to be bound and concluded by the verdict found in the first action, if such verdict shall be to the satisfaction of the judge who may try the same. And it is further ordered, that if the defendant pays the premium into court in that action, the other defendant shall within one week after such payment pay the premium into court in the other action under this rule, and that the plaintiff be at liberty to take the same out of court, and if he elects to accept such premiums in satisfaction of such action, that he be at liberty to proceed to tax his costs at any time, either before or after the verdict in the first-mentioned action. And it is further ordered, that if the verdict be found for the plaintiff in the first-mentioned action to the satisfaction of the judge before whom the same may be tried, then the defendant in the other action shall pay to the plaintiff the amount of the sum assured by him, or such proportion thereof as the verdict recovered bears to the sum assured by the defendant in that action, together with the costs up to that time, to be taxed by the master within a fortnight after the taxation of the plaintiff's costs in the action tried. And it is further ordered, that if the money be not so paid the plaintiff shall be at liberty to file a declaration, and sign judgment by default for the amount in the action in which the money is neglected to be paid, unless a judge shall otherwise order. And it is further ordered, that if the defendant in the first-mentioned action to be tried pays the premium into court, and the verdict is found for the defendant, the plaintiff nevertheless shall be at liberty to tax his costs, sign judgment, and issue execution in the other action for such costs, unless the defendant pays the same within a fortnight after the verdict in the action which shall be so tried as aforesaid.

3. *Judge's Order for Consolidation in C. P.*

*B. v. D. } Upon hearing the attornies or agents on both sides, and
Same v. E. }* upon the defendants in the two last-mentioned causes undertaking to be bound and concluded by such verdict as shall be found on the trial of the first-mentioned cause, I do order that all further proceedings in the said two last-mentioned causes be stayed until after the trial of the said first-mentioned cause.

(Judge's signature.)

4. *Judgment on a consolidation Rule, after Verdict against the Defendant in the principal Cause, with a Remittitur Damna (a).*

[Commence and proceed in the entry of the judgment as in other cases to the end of the award of the venire facias, see the form, ante, 102, and then thus:] At which day come here the parties aforesaid, by their attornies aforesaid: and hereupon the plaintiff gives the court here to understand and be informed, that on the — day of — in the — year of the reign of her present majesty, a certain order was made by the Right Honourable Sir —, knight, lord chief justice of the court here, in certain actions then depending in the same court here, by and at the suit of

(a) This was the form drawn up in 4 Ad. & Ellis, 649.

(a) See the form, Tidd's Forms, 336.

the plaintiff, on the said writing or policy of assurance in the [said declaration mentioned, that is to say, a certain action wherein] *E. F.* was defendant, and a certain other action wherein *G. H.* was defendant, and a certain other action wherein *J. K.* was defendant, and the said action wherein the said *C. D.* was defendant; whereby, upon hearing the attorneys or agents on both sides, and by their consent, and upon submission of the three last-mentioned defendants to be bound and concluded in the actions brought against them respectively, by the fate of such verdict as should be found in the first-named action, that is to say, in the said action against the said *E. F.* to the satisfaction of the judge before whom the same should be tried, and upon the defendant's undertaking to admit on the trial of the first-named action, his subscription to the policy in question, and the interest of the plaintiff, as averred in the declaration, the said chief justice did order that all proceedings in the three last-named actions should be stayed; the defendant in the first-named action consenting, in case a verdict should be found for the plaintiff, to the satisfaction of the judge before whom the same should be tried, that no writ of error should be brought for delay, nor any bill in equity filed to be relieved against such verdict. And the plaintiff gives the court here further to understand and be informed, that a verdict hath been found in the said first-named action for the plaintiff, against the said *E. F.* And upon this the plaintiff [freely here in court remits to the said *C. D.* all damages sustained by the said plaintiff on occasion of the not performing of the several promises in the last — counts of the said declaration mentioned; and he] prays judgment, and his damages by him sustained on occasion of the not performing of the said promise [in the said first count mentioned], to be adjudged to him, &c. And hereupon on — (*day of final judgment*) all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, and it being suggested and proved, and manifestly appearing to the said court here, that a verdict has been found in the said first-named action for the plaintiff against the said *E. F.* to the satisfaction of the judge before whom the said first-named action was tried, and that the plaintiff hath sustained damages, on occasion of the not performing of the said promise [in the said first count mentioned,] to the sum of £——, besides his costs and charges by him about his suit in this behalf expended; therefore it is considered that the plaintiff do recover against the said *C. D.* his damages aforesaid, to the said sum of £——, and also £—— for his said costs and charges by the court here adjudged to the plaintiff, and with his assent; which said damages, costs and charges in the whole amount to £——, and the said *C. D.* in mercy &c. [And let the said *C. D.* be acquitted of the damages so remitted as aforesaid, &c.] [*Add the usual marginal notes, as directed at the end of the form, ante, 102.*]

CHAPTER IX.

PAYMENT OF MONEY INTO COURT.

1. *Summons for leave to pay Money into Court in Cases within the 3 & 4 Will. 4, c. 42, s. 21 (a).*

B. } Let the plaintiff's attorney or agent attend me at my chambers in
 v. } Rolls' Garden, on the — day of — next, at — o'clock in the
 D. } forenoon, to show cause why the defendant shall not have leave to
 pay into court £——, [if upon a particular count, say "upon the —
 count of the declaration in this cause."]

[See 2 Chit. Ar. Pr. 969, 972.]

2. *Judge's Order thereon.*

B. } Upon hearing the attornies [or "agents"] on both sides, I order
 v. } that the defendant have liberty to pay into court £——, [upon the
 D. } — count of the declaration in this cause.] Dated the — day
 of —, 1840.

(Judge's or Baron's signature.)

3. *Plea of Payment of Money into Court to the whole Declaration, where no other Plea is pleaded (b).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A. D. —.

D. } The defendant by D. B. his attorney [or "in person," &c.]
 ats. } says, that the plaintiff ought not further to maintain his action,
 B. } because the defendant now brings into court the sum of £20 ready
 to be paid to the plaintiff. And the defendant further says, that the
 plaintiff has not sustained damages [or, in actions of debt, "that he never
 was indebted to the plaintiff"] to a greater amount than the said sum of
 £20 (c) in respect of the cause [or "causes"] (d) of action in the decla-
 ration mentioned, and this he is ready to verify; wherefore he prays
 judgment if the plaintiff ought further to maintain his action thereof.

[See 2 Chit. Ar. Pr. 973.]

(a) In other cases no rule or order is requisite. See 2 Chit. Ar. Pr. 972.

(b) The R. T. 1 Vict. prescribes this form. The circumstances of the case might require a deviation from it.

(c) In the form prescribed by the

rule of H. T. 4 Will. 4, the sum is not mentioned, but merely an "&c." is inserted after the word "of."

(d) In the form prescribed, the words "or causes" are not inserted.

4. *The like, where another Plea is pleaded.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A. D. —.

D. } The defendant by — his attorney [or "in person"] says, that
 ats. } except as to [£15], parcel of the monies in the declaration men-
 B. } tioned, he did not promise [or in debt, "never was indebted in
 manner and form as in the declaration is alleged, and of this he puts him-
 self upon the country, &c."], and as to the said sum of £15, parcel, &c.,
 the defendant says that the plaintiff ought not further to maintain his
 action thereof, because the defendant now brings into court the sum of
 £15 ready to be paid to the plaintiff. And the defendant further says,
 that the plaintiff has not sustained damages [or, in actions of debt, "that
 he never was indebted to the plaintiff"] to a greater amount than the said
 sum of £15, in respect of the cause [or "causes"] of action in the decla-
 ration mentioned, as to the said sum of £15 parcel, &c., and this he is
 ready to verify; wherefore he prays judgment if the plaintiff ought further
 to maintain his action thereof, in respect of the causes of action in the de-
 claration mentioned as to the said sum of £15, parcel &c.

5. *Replication to a Plea of Payment into Court of Acceptance of the Sum in satisfaction, where that Plea alone is pleaded (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

The — day of —, A. D. —.

B. } And hereupon the plaintiff accepts the said sum of [£20] out of
 v. } court here in full satisfaction and discharge of the cause [or "causes"]
 D. } of action in the declaration mentioned; therefore as to the said causes
 of action the plaintiff is satisfied; and because the defendant hath con-
 fessed the said causes of action the plaintiff prays judgment for his costs
 and charges by him about his suit in this behalf expended to be adjudged
 to him &c.

6. *The like, where another Plea is pleaded, and the Plaintiff intends proceeding to Trial on that Plea, and accepts the Money out of Court in Satisfaction of the Cause of Action to which the Plea of Payment into Court is pleaded (b).*

B. } The plaintiff, as to the plea of the defendant by him firstly above
 v. } pleaded, and whereof he hath put himself upon the country, doth the
 D. } like [or if there be other pleas, reply to them accordingly], and here-
 upon the plaintiff accepts the said sum of £15 out of court here, in full
 satisfaction and discharge of the causes of action in respect of the said sum
 of £15, parcel of the monies in the declaration mentioned; therefore, as
 to those causes of action, the plaintiff is satisfied. Thereupon &c.

(a) The R. H. 4 Will. 4, r. 19, allows this replication. See 2 Chit. Ar. Pr. 974.

(b) If the plaintiff will not proceed to trial on the other pleas, then, unless

the plea of payment into court be pleaded to the entire cause of action, he must enter a nolle prosequi. See form, post, 620.

7. *Replication, that Plaintiff has sustained greater Damages (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. 1840.

B. } And the plaintiff says, that he ought not, by reason of any thing
 v. } in the said plea [or "said — plea"] alleged, to be barred from
 D. } further maintaining his action [as to the said sum of —, parcel &c.
 as aforesaid] because he says, that he has sustained damages [or "that
 the defendant was and is indebted to him," as the case may be], to a
 greater amount than the said sum of — in respect of the causes of
 action [or "residue of the causes of action," or "causes of action as to the
 said sum of £—," according to the language of the plea] in the said de-
 claration mentioned, and this the plaintiff prays may be inquired of by the
 country &c.

8. *Judgment for Plaintiff, for not paying the taxed Costs after 48 hours from the Taxation.*

[Proceed in the entry of the judgment as usual, to the end of the replication inclusive, and continue the judgment thus:] And which said costs and charges were afterwards, on the — day of —, A. D. —, duly taxed at and allowed the sum of £10, and hereupon the plaintiff gives the court here to understand and be informed, that although forty-eight hours from such taxation have elapsed, yet the defendant hath not paid the said sum of £10, or any part thereof, to the plaintiff: therefore it is considered that the plaintiff do recover against the said J. D. the said sum of £10, for his costs and charges so taxed and allowed as aforesaid, and also the further sum of £— for his costs and charges by him about his suit in this behalf expended, since the taxation aforesaid by the court here adjudged to the plaintiff and with his assent; and which said several costs and charges together amount to the sum of £—, and the said defendant in mercy &c.

9. *Payment of Money into Court on Plea of Tender.*

[See 2 Chit. Ar. Pr. 981.]

10. *Payment of Money into Court in lieu of Bail.*

[See ante, 267.]

(a) The R. T. 1 Vict. prescribes the greater part of this form. See 2 Chit. Ar. Pr. 974.

CHAPTER X.

STAYING PROCEEDINGS.

1. *Order for Stay of Proceedings, on Payment of Debt and Costs.*

B. } Upon hearing the attornies [or "agents"] on both sides, I order
v. } that upon payment of £——, the debt for which this action is
D. } brought, together with costs, to be taxed and paid, all further pro-
ceedings in this cause be stayed. [Or sometimes the order is drawn up
so as to make it absolutely binding on the defendant to pay the costs.]
Dated this —— day of ——, 1840.

(Judge's or Baron's signature.)

[A summons may be readily framed from this form.]

[See 2 Chit. Ar. Pr. 982.]

2. *Summons to show cause why, on Payment of a Sum, the Action should not be stayed, and why, in case of Plaintiff's not accepting it, he should not pay Defendant's subsequent Costs, if he afterwards accepts it.*

B. } Let the plaintiff's attorney [or "agent"] attend me at my cham-
v. } bers in Rolls' Garden to-morrow at [three] of the clock in the
D. } [after] noon, to show cause why, upon payment to the plaintiff of
£——, together with the costs to be taxed, all further proceedings in this
cause shall not be stayed; or why, in the event of the plaintiff's refusing
to accept the same, and the defendant paying the same into court, and the
plaintiff then taking out the same in full satisfaction, or proceeding to
trial, and not recovering more, he should not pay to the defendant his
costs subsequent to this application. Dated the —— day of ——, 1840.

[See 2 Chit. Ar. Pr. 988.]

3. *Entry of Judgment on a Judge's Order for staying Proceedings on Payment of Debt and Costs, with liberty to sign Judgment if not paid.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On —— the —— day of ——, A. D. ——.

—— (to wit.) A. B. by P. A. his attorney, complains of C. D. [&c.
here copy the declaration verbatim.] The —— day of ——, A. D. ——, the
defendant by D. A. his attorney, says [here copy the plea]; and on the
—— day of ——, A. D. ——, (day of signing judgment,) come here the
parties aforesaid, by their attornies aforesaid, and hereupon the plaintiff
gives the court here to understand and be informed, that on the —— day
of ——, A. D. ——, a certain order was made in this action by Sir ——,
knight, one of the justices [or "barons"] of her majesty's court of ——,
whereby, upon hearing the attornies aforesaid for the plaintiff and the de-
fendant, and by their consent, it was ordered, that upon payment of
£——, the debt due from the defendant to the plaintiff, for which this
action is brought, and being the damages sustained by the plaintiff on

occasion of the not performing his said promises in the declaration mentioned, with costs, to be taxed and paid on the — day of — then instant, all further proceedings in this action should be stayed; and that unless the said debt and costs were paid as aforesaid, the plaintiff should be at liberty to sign final judgment, and issue execution for the amount and also the expenses attending the execution, if the said debt and costs were not paid on the said — day of — then instant; and the said costs and charges to be so taxed and paid as aforesaid, were on the — day of —, A. D. —, taxed and allowed by — esq. one of the Masters of the court here, at £—; and the plaintiff further gives the court here to understand and be informed, that although the defendant has had notice of the said taxation, and although the said — day of —, A. D. — hath elapsed, yet the said damages, amounting to the said sum of £—, and the said costs so taxed at £— still remain wholly unpaid to the plaintiff, which the defendant doth not deny; and hereupon the plaintiff prays judgment for the said damages and costs to be adjudged to him &c. Therefore it is considered by the court here, that the plaintiff do recover against the defendant his damages aforesaid, to the said sum of £—, and also the said sum of £— for his said costs by the said court here adjudged to the plaintiff, and with his assent, which said damages and costs amount in the whole to £—; and the defendant in mercy &c.

4. *Staying Proceedings on Reference to Master to compute, &c.*

[See ante, 342; 2 Chit. Ar. Pr. 721.]

5. *Staying Proceedings in Debt on Bail-Bond.*

[See ante, 242, and 1 Chit. Ar. Pr. 564, &c.]

6. *Staying Proceedings against Bail to Action, &c.*

[See 1 Chit. Ar. Pr. 618 to 642.]

7. *Staying Proceedings in Trover.*

[See 2 Chit. Ar. Pr. 985.]

8. *Staying Proceedings in Replevin.*

[See 2 Chit. Ar. Pr. 986.]

9. *Staying Proceedings in Ejectment.*

[See ante, 376, and 2 Chit. Ar. Pr. 754, 986.]

10. *Staying Proceedings in Second Action for same cause.*

[See 2 Chit. Ar. Pr. 990.]

11. *Staying Proceedings in trifling Actions.*

[See 2 Chit. Ar. Pr. 994.]

12. *Staying Proceedings in Actions pending Error, &c.*

[See 2 Chit. Ar. Pr. 994 &c.]

13. *Staying Proceedings pending Rule Nisi, &c.*

[See 2 Chit. Ar. Pr. 995.]

14. *Staying Proceedings in case of Adverse Claims.*

[See post, 586 ; 2 Chit. Ar. Pr. 995.]

15. *Staying Proceedings in other Cases.*

[See 2 Chit. Ar. Pr. 997.]

CHAPTER XI.

INTERPLEADER.

1. *Affidavit by the Defendant in an Action to obtain a Rule to require a third Person to appear and maintain &c. his Claim.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

C. D. —, [wharfinger,] the above-named defendant, maketh oath and saith, that on or about the — day of — last a [pipe of wine was delivered by the said A. B. to this deponent and deposited in this deponent's custody, and that he still holds the same; and this deponent further saith, that whilst he so had the said [pipe of wine] in his custody, and before the commencement of this action, viz. on or about the — day of — last, he this deponent was served with the following notice by one E. F. of —, that is to say, Sir [here copy the notice, if any, served on defendant by E. F., or if none, then otherwise state his having claimed the goods:] And this deponent further saith, that in consequence of such notice this deponent doth not know to whom the said [pipe of wine] belonged, or belongs, or to whom he is liable for the same: And this deponent further saith, that this action was commenced on the — day of — last, and the above-named plaintiff hath declared herein against this deponent in an action of trover, [or "assumpsit," or "debt," or "detinue,"] for and in respect of this deponent's not having [delivered the said pipe of wine to the above-named plaintiff:] And this deponent further saith, that he has not pleaded to this action, and this deponent does not claim any interest whatever in the said [pipe of wine] or subject-matter in this action: And this deponent further saith, that the right to the said [pipe of wine] and subject-matter of this action, at the time of the commencement hereof, was and is claimed by [and supposed by this deponent to belong to] the said E. F., who this deponent expects will sue for the same, as he [here state why you expect he will do so, as from a threat or notice, or otherwise: or if he has already brought an action state that fact:] And this deponent further saith, that he does not in any manner collude with the said E. F.; and this deponent is ready to bring [or "pay"] into this honourable court, or dispose of the subject-matter of this action, in such manner as this honourable court or any judge thereof may order or direct. [State any other facts that would induce the court to grant the application.]

Sworn [&c. as ante, 207.]

C. D.

[See 2 Chit. Ar. Pr. 999.]

2. Rule thereon, for Party to appear, &c.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

— the — day of —, in the year of our Lord 1840.

B. } Upon reading the affidavit of C. D. it is ordered that the plaintiff,
v. } upon notice of this rule to be given to his attorney, and E. F. in the
D. } said affidavit named, upon notice of this rule to be given to him or
to his attorney, shall upon —, the — day of instant, show cause
why they should not respectively appear before the court, and why the
said E. F. should not state the nature and particulars of his claim to the
subject-matter of this action, and maintain or relinquish such claim, and
why the court should not make such order thereon as to it shall seem fit,
pursuant to the statute of the first and second years of the late King
William the Fourth, c. 58, and why in the meantime all proceedings in
this action should not be stayed. Upon the motion of Mr. —.

By the Court:

[See 2 Chit. Ar. Pr. 999.]

3. Rule thereon, ordering third Party to be made Defendant in the Action.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

—, the — day of —, A. D. —.

B. } Upon reading the rule made in this cause, on —, the — day
v. } of — instant, [or "last,"] the affidavit of C. D., and upon hearing
D. } Mr. —, of counsel for the plaintiff, Mr. —, of counsel for the
defendant, and Mr. — of counsel for E. F. in the said rule named, it
is ordered that the said E. F. do make himself defendant in this action
instead of the said now defendant C. D.; and by the consent of counsel
for all the parties it is ordered that [&c. *The court will here order the
subject-matter of the action to be brought into court, or paid or disposed of
in such manner as they think fit, and will also make an order as to
costs*](a).

By the Court.

4. Affidavit of Service of Rule where the third Person does not appear, in order to bar his Complaint against Defendant.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

D. A. of —, the above-named defendant's attorney, maketh oath
and saith, that on the — day of — instant [or "last"] he this de-
ponent did personally serve E. F. of —, with a true copy of the rule
hereunto annexed, [annex it. *If it has not been personally served, omit
the word "personally," and state the mode of service as thus:*] by leaving
the same for him with a son [or "servant"] of the said E. F. then
residing at his dwelling-house [or "chambers"] in —. [See a form,
ante, 337.]

Sworn [&c. *ante*, 207.]

D. A.

(a) See a form of defendant's undertaking to deliver up the goods, and barring plaintiff from proceeding on

the trover count in a declaration, 4 B. & Adol. 380.

5. *Rule of Court thereon, barring the third Person of his Claim against Defendant.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

—, the — day of —, A. D. —.

B. } Upon reading the rule made in this cause on —, the — day
v. } of — instant, [or "last,"] the affidavit of C. D., and the affidavit
D. } of D. A. gent. and upon hearing Mr. —, of counsel for the plain-
tiff, and Mr. — of counsel for the defendant, and E. F. the party
named in such rule and affidavit, not appearing upon the said rule to
maintain or relinquish his claim, as therein ordered, and having been duly
served with such rule, it is ordered and declared by this court, that the
said E. F., and all persons claiming from or under him, shall be and
they are hereby for ever barred from prosecuting his claim mentioned and
referred to in the said rule and affidavit of the said C. D. against the said
C. D. his executors or administrators [hereby saving nevertheless the said
E. F.'s right or claim against the plaintiff]; and it is further ordered,
that [the court will here make such further order between the defendant
and plaintiff, as to costs and other matters, as they may think fit.]

By the Court.

6. *Affidavit on behalf of Sheriff, to obtain Relief in Execution of Process on Goods, where Action brought against him by adverse Claimant.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. and C. D.

B. B. of —, in the county of —, officer to the sheriff of —, maketh oath and saith, that under and by virtue of a writ of fi. fa. which appeared to this deponent to have been regularly issued out of this honourable court in this cause, directed to the said sheriff, commanding him that he should cause to be levied of the goods and chattels of the above-named defendant a certain debt of £—, which the above-named plaintiff had recovered against the said defendant in this honourable court, returnable immediately after the execution thereof, [or "on —,"] and indorsed to levy the whole besides legal charges, and also of a warrant of the said sheriff granted on the said writ, he this deponent did, on the — day of — [instant] take possession of certain goods and chattels in the dwelling-house of the above-named defendant, situate at — in the same county, and that the said goods and chattels still remain in the custody or possession of the said sheriff: And this deponent further saith, that on or about the — day of — [instant] he this deponent was served with a written notice, of which the following is a copy (*here copy the notice by the third person to the sheriff of his claim, if such notice was given*): And this deponent further saith, that a writ has since been issued and served by the said P. A. as the attorney for the said E. F. (*the claimant*) against the said sheriff, for the purpose, as he this deponent verily believes, of commencing an action against him for the said seizure of the said goods and chattels; and that the said sheriff is likely to be put to great hazard and expense in defending the said action: And this deponent further saith, that this application is made to this honourable court solely on behalf of this deponent as officer to the said sheriff, at his this deponent's own expense, and for his indemnity only.

Sworn [&c. ante, 207.]

B. B.

[See 2 Chit. Ar. Pr. 1004.]

7. Rule thereon, calling on the Parties to appear and maintain &c. their respective Claims.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

_____, the _____ day of _____, A. D. _____.

B. } Upon reading the affidavit of B. B. is ordered that the plaintiff,
v. } upon notice of this rule to be given to his attorney, and E. F. in
D. } the said affidavit named, upon notice of this rule to be given
to him or his attorney, shall upon _____, the _____ day of _____ [instant]
show cause why they should not respectively appear before the court
and maintain or relinquish their respective claims to the goods taken
in execution in this cause, and why the court should not make such
order thereon as to it shall seem fit, pursuant to the statute of the first
and second years of his late majesty king William the Fourth, c. 58.
Upon the motion of Mr. _____

By the Court.

8. Rule thereon, ordering Plaintiff in original Action to be made Defendant instead of Sheriff (a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

_____, the _____ day of _____, A. D. _____.

B. } Upon reading the rule made in this cause on _____ the _____
v. } day of _____, in this term, the affidavit of B. B., the affidavit of
D. } E. F., and upon hearing Mr. _____ of counsel for the plaintiff, Mr.
_____ of counsel for E. F. in the said rule named, and Mr. _____ of counsel
for the sheriff of the county of _____, it is ordered that the plaintiff in this
cause be substituted as defendant instead of the said sheriff, in the action
brought against the said sheriff by the said E. F. in respect of the execu-
tion in this cause. And it is further ordered that the said sheriff do sell
the goods taken in execution as aforesaid, and pay the net proceeds
thereof into court, after deducting the poundage, to abide the event of
the said action; and that the said sheriff do pay the said poundage over
to the said E. F. if he shall succeed in the said action.

By the Court.

9. Affidavit of Service of Rule.

[See form, ante, 587, No. 4.]

10. Summons at instance of Sheriff calling on Plaintiff and Claimant to appear and maintain &c. their Claims on Goods seized under an Execution.

B. } Let the plaintiff and Mr. C. C. the claimant, their attornies or
v. } agents, attend me at my chambers in Rolls Garden, Chancery Lane,
D. } London, to-morrow [on _____], at _____ o'clock in the _____ noon,
to show cause why they should not appear and state the nature and par-
ticulars of their respective claims to the goods and chattels seized by the
sheriff of _____ under the writ of fieri facias issued in this cause, and
maintain or relinquish the same, and abide by such order as may be made

(a) See form of rule in *Parker v. Booth*, 1 M. & Scott, 150; 8 Bing. 85, S. C.

herein, and why in the mean time all further proceedings should not be stayed. Dated the — day of —, A. D. —.

(Judge's name.)

11. *Entry of Proceedings on Record.*

[This entry must be upon a judgment roll commencing with a declaration in the cause, if any, see form, ante, 102; then follows the rule, order, or decision of the court or judge on the application. See 2 Chit. Ar. Pr. 1003; 2 Chapman's Second Addenda to Practice, 162.]

12. *Docket Paper thereon in Q. B.*

The entry of P. A. gent. one &c. of — term, — Victoria. —. The entry of a rule of court made [&c. here state the substance of the rule, order, or decision of the court or judge.]

Roll —.

13. *Notice of Costs after Taxation.*

[Serve a copy of the rule of court, with the master's allocatur for costs thereon, on the party required to pay the same, his attorney or agent, with an indorsement of such copy of the rule, to this effect:] Take notice, that unless the sum of £— allowed for costs on the within rule be paid within fifteen days from the date hereof, proceedings by execution will be taken for the recovery thereof. Dated the — day of — 1840.

Your's &c.

P. A. plaintiff's [or "defendant's"]
attorney [or "agent".]

[See 2 Chapman's Second Addenda, 164.]

14. *Fieri Facias for the Costs.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you that you cause to be made of the goods and chattels in your bailiwick of C. D. the sum of — which * in our court before us [or in C. P. "before our justices, or in Exch. "before the barons of our Exchequer"] at Westminster, according to the form of the statute lately made and provided, was adjudged to A. B. for his costs and charges by him expended in and about the prosecution of his claim against the said C. D. in our said court [or if the rule or order be against the party making the claim, and he was ordered to pay costs, then say "for costs and charges by him expended by reason of the false claim of the said A. B. prosecuted against the said C. D. in our said court,"] and whereof the said C. D. is convicted, as appears to us by entry of record of a certain rule of our said court made [or "of a certain order made by — one of the judges of our said court"] on the — day of —, whereby, [&c. here state the substance of the rule or order,] together with interest upon the said sum of —, at the rate of £4 per centum per annum, from the — day of —, A. D. — *, and have you that money before us [or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer"], at Westminster, immediately after the execution hereof

[or "on ——"], to render to the said *A. B.* for his said costs and charges, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us [or in *C. P.* "to our said justices," or in *Exch.* "to the said barons'"] at Westminster, immediately after the execution thereof, and have there then [or in *C. P.* or *Exch.* omit the word "then"] this writ. Witness —— (name of chief justice, or in *Exch.* of chief baron), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 *Chit. Ar. Pr.* 1003.]

15. *Capias ad Satisfaciendum for the Costs.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —— greeting: We command you that you take *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [or in *C. P.* "before our justices," or in *Exch.* "before the barons of our Exchequer'"] at Westminster, immediately after the execution hereof [or "on —— next"], to satisfy *A. B.* the sum of £—— which [&c. proceed as in the above form, inserting that part of it which is between the asterisks**, and conclude thus:] and have you there then [or in *C. P.* or *Exch.* omit the word "then"] this writ. Witness —— (name of chief justice, or in *Exch.* of chief baron), at Westminster, the —— day of ——, in the year of our Lord ——.

[See 2 *Chit. Ar. Pr.* 1003.]

CHAPTER XII.

SECURITY FOR COSTS.

1. *Application to Plaintiff's Attorney for Security for Costs.*In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

A. B. against C. D.

Sir,

I hereby require of the plaintiff to give the defendant in this cause security for the payment of the defendant's costs, otherwise I shall apply to the court [*or* "a judge of this honourable court"] to compel him to do so.

Your's &c.

D. A. defendant's attorney

[*or* "agent."]

To Mr. P. A. plaintiff's attorney

[*or* "agent."][*See 2 Chit. Ar. Pr.* 1016.]2. *Affidavit to stay Proceedings till Security given for Costs.*In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

A. B. plaintiff, C. D. defendant.

C. D. of —, the above-named defendant, and D. A. of —, gentleman, his attorney, severally make oath and say, and first this deponent C. D. for himself saith, that the residence of the above-named plaintiff is at —, in the kingdom [*or* "dominion," *or* "state"] of —, and that he the said plaintiff is usually resident, and that he now, as this deponent hath been informed and verily believes, resides there: And this deponent further saith, that he was served with process in this action on or about the — day of — last [*or* "instant"]: And this deponent D. A. for himself saith, that a common appearance hath been duly entered in this cause for the said defendant: And this deponent further saith, that a declaration in this cause hath been delivered [*or* "filed and a notice thereof served"], but that the said defendant hath not as yet pleaded thereto: And this deponent further saith, that he did on the — day of — last [*or* "instant"], for and on the part and behalf of the said defendant, demand of P. A. gentleman, attorney for the above-named plaintiff, security for costs in this action, but that the said P. A. refused to give any such security; and thereupon this deponent did, on the said — day of — last [*or* "instant"] serve the said P. A. with a true copy of the notice hereunto annexed, by delivering such copy to the said P. A. [*or* "to a clerk," *or* "servant," of the said P. A. at his chambers *or* "house" &c. in —.] [*See ante*, 337.]

The above-named deponents C. D. and D. A. }
were sworn [&c. *See ante*, 207.] }

C. D.

D. A.

[*See 2 Chit. Ar. Pr.* 1015.]

3. Summons to obtain a Judge's Order for Security for Costs.

B. } Let the plaintiff's attorney or agent attend me at my chambers
v. } in Rolls' Garden, on — next, at — o'clock of the forenoon [or
D. } "afternoon"], to show cause why further proceedings in this cause
should not be stayed until the plaintiff shall have given security for costs
in this cause; and that in the meantime proceedings be stayed. Dated
this — day of —, A.D. 1840.

(Judge's signature.)

4. Order thereon.

[An order may be readily framed from the above summons and the form
of the rule nisi, infra.]

5. Notice of Motion for Security for Costs.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice that this honourable court will be moved on — next, or
as soon after as counsel can be heard, for a rule to show cause why the
proceedings in this cause should not be stayed until security be given for
the payment of costs. Dated the — day of —, 1840.

Your's &c.

D. A. defendant's attorney.

To Mr. P. A. plaintiff's attorney.

[See 2 Chit. Ar. Pr. 1016.]

6. Rule Nisi thereon.

On — the — day of —, A. D. —.

B. } Upon reading the affidavit of C. D. and another, it is ordered,
v. } that the plaintiff, upon the notice of this rule to be given to him or
D. } his attorney, shall on — show cause why further proceedings in
this cause should not be stayed, until the plaintiff shall have given such
security for the costs in this cause, in case he shall be nonsuit, discon-
tinue, or a verdict be given for the said defendant, as one of the masters
shall approve of; and that in the meantime proceedings be stayed. Upon
the motion of Mr. —. By the Court.

[See 2 Chit. Ar. Pr. 1016.]

7. Security for Costs in Ejectment.

[See form, ante, 376.]

8. Bond for securing Costs.

Know all men by these presents, that we E. B. of —, — and E. M.
of —, —, are held and firmly bound to W. L. of —, in the sum of
£—, of lawful money of Great Britain, to be paid to the said W. L., or
his certain attorney, executors, administrators, or assigns, for which pay-
ment to be well and faithfully made, we bind ourselves and each of us,
our and each of our heirs, executors, and administrators, firmly by these
presents, sealed with our seals. Dated this — day of —, A. D. —.

Whereas a certain action hath been lately commenced and is now depending in her majesty's court of — at Westminster, wherein *E. H.* and *D. M.* are plaintiffs, and the above-named *W. L.* is defendant, and by reason of the said plaintiffs residing out of the jurisdiction of the said court, the said defendant hath applied to the said plaintiffs to give security for costs in the said cause, in case the said plaintiffs shall be nonsuit, discontinue, or a verdict be given for the said defendant. And whereas the said *E. B.* and *E. M.* have agreed to enter into the above written bond as security for the payment of such costs of the said defendant with such condition as is hereinafter contained. Now, therefore, the condition of the above-written bond or obligation is such, that if the above bounden *E. B.* and *E. M.* or either of them, their or either of their heirs, executors, or administrators, shall and do well and truly pay or cause to be paid unto the said *W. L.* or his executors, administrators, or assigns, such costs as the said *E. H.* and *D. M.* shall in due course of law be liable to pay in case they shall discontinue, become nonsuit or a verdict shall pass against them in the said action, such costs to be first taxed by one of the masters in the usual manner, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered in }
the presence of —. }

E. B. (l.s.)

E. M. (l.s.)

CHAPTER XIII.

OYER OF DEEDS, &c.

1. *Demand of Oyer, by Defendant.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

B. against *D.*

The defendant demands oyer and copy of the writing obligatory mentioned in the declaration in this cause, and the condition thereof [*or* "of the deed poll," "indenture," "articles of agreement," &c. mentioned in the declaration in this cause.] Dated the — day of —, 1840.

Your's &c.

D. A. defendant's attorney
[*or* "agent."]

To Mr. *P. A.* plaintiff's attorney
[*or* "agent."]

2. *The like, by Plaintiff.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

The plaintiff demands oyer and copy of the indenture of lease [&c. as in preceding form] mentioned in the plea in this cause. Dated the — day of —, 1840.

Your's, &c.

P. A. plaintiff's attorney
[*or* "agent."]

To Mr. *D. A.* defendant's attorney
[*or* "agent."]

[See 2 Chit. Ar. Pr. 1020.]

CHAPTER XIV.

COPIES OR INSPECTION OF WRITTEN INSTRUMENTS.

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1. *Affidavit to ground a Motion to obtain Inspection of an Agreement.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.* plaintiff, and *C. D.* defendant.

A. B. of — [builder], the above-named plaintiff, and *P. A.* of —, his attorney, severally make oath and say, and first this deponent, the said *A. B.*, for himself saith, that on or about the — day of —, he this deponent entered into a contract in writing with the above-named defendant in this cause for [the building of a certain house, No. —, in — street, in the county of —,] which said contract was left in the custody of the said defendant; and the said *A. B.* and *P. A.* severally say, that they verily believe that the said contract is still in the custody of the said defendant or his attorney, and that they verily believe that the said plaintiff is entitled to recover in this action: And this deponent *P. A.* says, that he did on &c. apply to and request the said defendant to allow an inspection of the said contract by him as the attorney of the said plaintiff in this cause, and to grant him a copy thereof, at the same time offering to pay the charges so to be incurred on that account, and that the said defendant did not grant either the said inspection or copy, [but referred this deponent to his attorney, Mr. —, of &c.] And this deponent further saith, that he did on &c. apply to the said Mr. —, and request inspection and copy of the said contract, and make an offer of payment for the same, but that he did not obtain either an inspection or copy; and that he this deponent did inform Mr. —, that unless the same were supplied on or before the — day of &c. instant, he should consider that such inspection and copy were refused]: And these deponents severally say, that the said inspection and copy have not nor hath either of them been yet granted to them or either of them, or to any other person on the account of the said plaintiffs. [State any other fact that may induce the court or judge to grant the application.]

Sworn [&c. ante, 207.]

*A. B.**P. A.*

[See 2 Chit. Ar. Pr. 1023, 1025.]

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CHAPTER XV.

PARTICULARS OF DEMAND, SET-OFF, &c.

1. *Particulars of a Demand, to be delivered with a Declaration containing an Indebitatus Count only, where the full Particulars can be comprised in three folios.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

This action is brought to recover £25 : 10s., being [the balance] due to the plaintiff, upon the following items of account.

1839. June 24.	To half year's rent to this day, of	£.	s.	d.
	premises in ———		25	10 0
Sept. 12.	To 10 sacks of corn at 10s.		5	0 0

Above are the particulars of the plaintiff's demand, and the plaintiff will avail himself of all or any of the counts in the declaration in this action for the recovery of the said demand. Dated the ——— day of ———, 1840.

Your's &c.

P. A. plaintiff's attorney
[or "agent."]

To Mr. D. A. defendant's attorney
[or "agent."]

[See 2 Chit. Ar. Pr. 1028.]

2. *The like, where the Declaration contains Special and Indebitatus Counts.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

The following are the particulars of the plaintiff's demand, under the indebitatus counts in the declaration in this cause. [Here copy the account concisely.] And the plaintiff will avail himself of all or any of the counts in the declaration in this action for the recovery of the said demand. Dated the ——— day of ———, 1840.

Your's &c.

P. A. plaintiff's attorney
[or "agent."]

To Mr. D. A. defendant's attorney
[or "agent."]

3. *Statement of Claim, to be delivered with a Declaration containing an Indebitatus Count only, where the full Particulars cannot be comprised in three folios.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

This action is brought to recover £——, [being the balance of an account] due and owing from the defendant to the plaintiff, for butcher's

meat supplied by plaintiff to defendant, from the 1st Jan. 1831, to the 1st Jan. 1840, [*stating the particulars concisely as well as you can:*] full particulars whereof cannot be comprised within three folios: And the plaintiff will avail himself of all or any of the counts in the declaration in this action for the recovery of the said demand. Dated the — day of —, 1840.

Your's &c.

P. A. plaintiff's attorney.
[or "agent."]

To Mr. D. A. defendant's attorney
[or "agent."]

4. The like, where the Declaration contains both Special and Indebitatus Counts.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

The plaintiff seeks to recover under the indebitatus counts in the declaration in this cause, £— for builder's, carpenter's, joiner's, plasterer's, and mason's work, done at the premises in —, and for materials thereon, provided between the 1st of January, 1839, and the 1st of January, 1840; full particulars whereof cannot be comprised within three folios: And the plaintiff will avail himself of all or any of the counts in the declaration in this action for the recovery of the said demand. Dated the — day of —, 1840.

Your's &c.

P. A. plaintiff's attorney
[or "agent."]

To Mr. D. A. defendant's attorney
[or "agent."]

5. Summons for Particulars of Demand.

D. } Let the plaintiff's attorney or agent attend me, at my cham-
ats. } bers in Rolls' Garden, to-morrow [or "on — next"], at
B. } — of the clock in the forenoon [or "afternoon"],* to show
cause why he should not deliver to the defendant's attorney or agent, an account in writing [with dates] of the particulars of the plaintiff's demand for which this action is brought; and why in the meantime all proceedings in this cause should not be stayed [*and specify any other terms you may be desirous of imposing on plaintiff.*] Dated the — day of —, 1840.

[See 2 Chit. Ar. Pr. 1032.]

6. Order thereupon.

D. } Upon hearing the attornies or agents on both sides, I do order
ats. } that the plaintiff's attorney or agent* shall deliver to the de-
B. } fendant's attorney or agent an account in writing [with dates]
of the particulars of the plaintiff's demand for which this action is brought; and that in the meantime all further proceedings in this cause be stayed [*and specify any other terms the judge may think fit to impose on plaintiff.*] Dated the — day of —, 1840.

(Judge's signature.)

[See 2 Chit. Ar. Pr. 1032.]

7. Summons for Particulars of Demand without paying the Costs of them &c. Plaintiff not having delivered a Particulars with his Declaration containing Indebitatus Counts.

D. } [As usual, as in form, ante, 597, No. 5, to the asterisk*] to
 ats. } show cause why he should not deliver to the defendant's attor-
 B. } ney or agent an account in writing [with dates] of the particu-
 lars of the plaintiff's demand for which this action is brought, without
 being under terms of pleading issuably or other terms, and why in the
 meantime all proceedings in this cause should not be stayed; and why
 such particulars should not be furnished without costs to the plaintiff for
 such particulars, or of attending this application. Dated the — day of
 —, 1840.

(Judge's signature.)

8. Judge's Order thereon.

D. } [As usual, as in form, ante, 597, No. 6, to the asterisk*] shall
 ats. } deliver to the defendant's attorney or agent an account in
 B. } writing [with dates] of the particulars of the plaintiff's demand
 for which this action is brought, and that in the meantime all further
 proceedings in this cause be stayed; and that such particulars be fur-
 nished without costs to the plaintiff for such particulars, or of attending
 this application [and state any other terms the judge may think fit to im-
 pose.] Dated the — day of —, 1840.

(Judge's signature.)

[See 2 Chit. Ar. Pr. 1033.]

9. Particulars of Demand in ordinary cases when not accompanied by the Declaration.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

This action is brought to recover £— [being the balance] due to plaintiff out of the following items of account: [here set out the account with certainty and precision.]

Above are the particulars of the plaintiff's demand in this action.
 Dated the — day of —, 1840.

Your's &c.

P. A. plaintiff's attorney
 [or "agent."]

To Mr. D. A. defendant's attorney
 [or "agent."]

10. Particulars of Demand, in an Action on a Bill of Exchange, with Money Counts.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

This action is brought to recover the amount of the bill of exchange mentioned in the [first] count of the declaration in this cause; and also for the recovery of the balance due to the plaintiff on the following account: [here copy the account.]

Above are the particulars [&c. conclude as in the preceding form.]

11. *Particulars of Demand on a Special Count.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

This action is brought to recover such damages as a jury shall by their verdict think fit to give the plaintiff, for and in respect of the causes of action fully and particularly set forth in the special count of the declaration in this cause, and which damages the plaintiff estimates at £——; and more particularly to recover damages for and in respect of the following causes of action [*here set them out.*]

Above are the particulars [&c. *as ante*, 598, No. 9.] Dated the —— day of ——, 1840.

Yours &c.

P. A. plaintiff's attorney
[or "agent."]

To Mr. D. A. defendant's attorney
[or "agent."]

12. *Particulars of Demand, in Action for Mesne Profits.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

This action is brought to recover the mesne profits of a dwelling-house [&c. *describing the premises concisely and their situation,*] from the —— day of ——, 1840, till the execution of the writ of possession, issued on a judgment in ejectment, brought on the demise of the plaintiff, being on or about the —— day of ——, 1840, at the rate of £ —— per annum: and also £ —— for the costs of obtaining possession of the premises, under the said judgment.

Above are the particulars [&c. *conclude as in preceding form.*]

13. *Particulars of Premises or Breaches for which an Ejectment is brought.*

[*See the forms, ante*, 374, 375, Nos. 36, 37, 38.]

14. *Order for a Particulars of Set-off.*

B. } Upon hearing the attornies [or "agents"] on both sides, I do
v. } order that the defendant's attorney or agent shall deliver to the
D. } plaintiff's attorney or agent an account in writing [with dates] of
the particulars of the defendant's set-off in this action, on or before the
—— day of —— instant, [or "within —— days,"] or in default thereof
the defendant shall be precluded from giving any evidence in support of
such set-off at the trial of this cause. Dated &c.

[*Judge's signature.*]

15. *Particulars of Set-off.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. against C. D.

The following are the particulars of the defendant's set-off in this action; [*here set out the particulars of the set-off with certainty and precision, as you would in a particulars of demand.*] Dated &c.

Your's &c.

D. A. defendant's attorney,
[or "agent."]

To Mr. P. A. plaintiff's attorney
[or "agent."]

[*See 2 Chit. Ar. Pr.* 1032, 1033.]

16. *Particulars of Objections to Patent.*

In the Q. B. [*or C. P.*] *or* "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

The defendant in this action, besides denying that he has infringed the letters-patent in the declaration mentioned, will also rely upon the following objections, that is to say, that [*here set forth the objections fully and precisely*]. And the defendant hereby gives notice to the plaintiff of the said objections, according to the form of the statute in such case made and provided. Dated [&c.]

To the above-named plaintiff,
and to his attorney
[*or* "agent."]

Your's &c.

defendant's attorney.

[*See 2 Chit. Ar. Pr. 1031.*]

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CHAPTER XVI.

COMPOUNDING PENAL ACTIONS.

1. *Notice of Motion to Crown Officer, where part of Penalty goes to the Crown.*In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]Between A. B. who sues &c. plaintiff,
and
C. D. defendant.

This action is brought for the recovery of penalties to the amount of £——, alleged to have been incurred by the above-named defendant upon and by virtue of an act of parliament made and passed in the —— year of the reign of King ——, intituled "An Act [&c.]; And it hath been agreed between the said plaintiff and defendant to apply to the court of —— for leave to compound this action, upon the defendant's paying the sum of £—— to our lady the now queen, and £—— to the said plaintiff, together with the costs of this action and of the said application, to be taxed by the proper officer, [*or otherwise, stating the agreement according to the fact*]: And you will be pleased to notice, that the said court of —— will be moved on the —— instant, [*or* "next,"] or as soon after as counsel can be heard, for leave to make the said composition. Dated the —— day of ——, 1840. Your's &c.

To ——, esq.

P. A. plaintiff's [*or* "defendant's"] attorney.
[*See 2 Chit. Ar. Pr. 1040.*]2. *Affidavit to ground Motion.*In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

Between A. B. who sues &c. plaintiff, and C. D. defendant.

A. B. of ——, labourer, the above-named plaintiff, and P. A. his attorney, severally make oath and say, and first this deponent A. B. for himself maketh oath and saith, that this action is brought for the recovery of a certain penalty [*or* "penalties"], amounting to the sum of £——, surmised to have been incurred by the defendant above-named upon and by virtue of an act of parliament made and passed in the —— year of the reign of ——, intituled "An Act" [&c. *here mention the stage of the action, as whether it be before or after declaration, plea, issue, or verdict; if before declaration, say* "but this deponent hath not as yet declared in the said action:" *if after declaration, and before plea, you may say* "and this deponent hath filed a declaration in the said action against the defendant, but who hath not as yet pleaded thereto" &c.]. And this deponent further saith, that it hath been agreed between this deponent and the said defendant that an application should be made to this honourable court by and on the behalf of this deponent and the said defendant for leave to compound the said action, upon the said defendant's paying the sum of £—— [*half the composition*] to our lady the now queen, and the sum of £—— to this deponent, together with the costs of this action and of the present application, to be taxed by the proper officer [*whatever is*

the agreement between the parties should be here stated.] And this deponent further saith, that what is above stated to be the agreement between this deponent and the said defendant respecting the compounding the said action contains wholly and truly the terms upon which this action is intended to be compounded by them. And this deponent saith, that he hath not, nor hath nor have any other person or persons for his use, received any sum or sums of money whatever for or on account of compounding the said action, nor is nor are any other person or persons by his order or by his appointment, or for his use or for the use of any other person or persons by his knowledge, or with his privity and consent, at any time or times hereafter, to have and receive for and on account of compounding the said action more than the aforesaid sum of £——, and the costs to be taxed as above mentioned. And this deponent P. A. on his oath saith, that he did on the —— day of —— [*or "instant"*] serve —— esq. the master of the crown office, with a true copy of the notice following, that is to say, [*here copy the notice served on him.*] A. B.
Sworn [&c. *as ante*, 207.] P. A.

3. Rule thereon in Q. B. (a).

B. { Upon reading the affidavit of A. B., and upon hearing
who sues &c. { Mr. —— of counsel for the plaintiff, and by the consent
v. { of Mr. —— of counsel for the defendant, and it appearing
D. { that notice has been given to the master of the crown
office, according to the rule of Hilary term, 2 William 4, and the sum of
£——, being a moiety of the composition agreed to be accepted in full
satisfaction and discharge of this suit, being paid into the hands of the
said ——, esq. the master of the crown office, for the use of her majesty;
and the defendant hereby undertaking to pay to the plaintiff, or his at-
torney, the sum of ——, the other moiety thereof, together with the costs
of suit and of this application, to be taxed by the master: It is ordered,
that the plaintiff, who sues as well for our sovereign lady the queen as for
himself, have leave to compound this action with the defendant, for the
sum of £——, being —— of the penalties mentioned in the declaration
in this cause, for the offences for which this action is brought, namely, for
——, [*describe concisely the nature of the offence,*] contrary to the provi-
sions of the statute of the —— year of her present majesty's reign [*or*
"of the reign of his late majesty king ——,"] chap. ——. Upon the
motion of Mr. ——.

By the Court.

[See 2 Chit. Ar. Pr. 1041.]

(a) See Tidd's Forms, 184.

CHAPTER XVII.

SETTING ASIDE PROCEEDINGS FOR IRREGULARITY.

1. *Notice of Motion generally.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice that this honourable court will be moved on — next [or "instant"] or as soon after as counsel can be heard, for a rule to show cause why* ["all the proceedings in this cause should not be set aside for irregularity, with costs to be taxed by the master,"] and that in the meantime all further proceedings be stayed. Dated the — day of —, 1840.

To Mr. D. A. defendant's
[or "plaintiff's"] attorney.

P. A. plaintiff's
[or "defendant's"] attorney.

[See 2 Chit. Ar. Pr. 1045, &c.]

2. *The like, to set aside Mesne Process.*

[Proceed as in the above to the*, and then thus:] why the writ of capias [or "writ of summons," or "distringas," or "alias," &c. as the case may be], should not be quashed, and all proceedings thereon set aside for irregularity, with costs to be taxed by the master, and why in the meantime all further proceedings should not be stayed. Dated [&c. conclude as in the preceding form.]

3. *The like, to set aside Interlocutory Judgment, &c.*

[Proceed as in the form, supra, No. 1, to the asterisk*, and then thus:] Why the interlocutory judgment signed in this cause [if a writ of inquiry has been executed, though generally the application must be made before it, say "and the writ of inquiry executed thereon,"] should not be set aside for irregularity, with costs to be taxed by the master. Dated [&c. conclude as in form, supra, No. 1.]

4. *The like, to set aside Judgment and Execution, and that the Money levied be restored.*

[Proceed as in form, supra, No. 1, to the*, and then thus:] Why the judgment signed in this cause, and the execution issued and executed thereon, should not be set aside for irregularity, with costs to be taxed by the master, and why the sum of £——, levied and paid into the hands of the sheriff of —, should not be restored to the defendant, and why the said sheriff should not retain the same in his hands until the further order of this court, and in the meantime all further proceedings be stayed [&c. conclude as in form, supra, No. 1.]

5. *Notice of Motion where the Party or his Attorney has been guilty of some Abuse of the Proceedings or Misconduct.*

[*After proceeding as usual, and as in the above forms, add,*] And why the plaintiff [or "defendant"], or Mr. P. A. the plaintiff's [or "defendant's"] attorney, should not answer the matters in the affidavit to be made in support of the motion.

6. *Notice to the Sheriff, to retain Money levied, &c.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that this honourable court will be moved on — next, or as soon after as counsel can be heard, for a rule to show cause why the judgment in this cause, and the execution thereon executed, should not be set aside for irregularity, with costs to be taxed by the master, and why the money levied by you [or "paid into your hands"] should not be restored and paid over to the defendant; and you are hereby required to retain the same in your hands until the further order of the court in this behalf. Dated the — day of —, 1840.

D. A. defendant's attorney.

To S. S. sheriff of Surrey, and to B. B. his officer,
and others whom this may concern.

7. *Affidavit in general.*

[*The affidavit must necessarily depend on the circumstances of each particular case. See 2 Chit. Ar. Pr. 1044; and as to the affidavits in general, id.*]

8. *Rule nisi, for setting aside Proceedings for Irregularity, in Q. B. or Exchequer (a).*

In the Q. B. [or "Exch. of Pleas."]

— the — day of —, A. D. —.

B. } Upon reading the affidavit of D. A. it is ordered, that the plaintiff
v. } [or "defendant"] upon notice of this rule to be given to him or his
D. } attorney, shall upon — show cause why the [*here state the proceedings to be set aside*] in this cause, and all further proceedings, should not be set aside for irregularity, with costs to be taxed by the master, and that in the meantime all further proceedings be stayed. On the motion of Mr. —.

By the Court.

9. *The like, in C. P. (a)*

In the Common Pleas, the — day of —, A. D. —.

Upon reading the affidavit of D. A. it is ordered, that the plaintiff [or "defendant"] upon notice of this rule to be given to him or his attorney, shall show cause to this court on — next, why the [*name the proceedings to be set aside*] in this cause should not be set aside for irregularity; and why the plaintiff [or "defendant"] should not pay to the defendant

(a) A summons for the same purpose may readily be framed from these forms. But the irregularity must be specified in the summons.

[or "plaintiff"] or his attorney, his costs of and occasioned by this application to the court, to be taxed by one of the masters of this court, and in the meantime, and until this court shall otherwise order, let all further proceedings in this cause be stayed.

By the Court.

On the motion of Serjt. — for the
defendant [or "plaintiff."]

10. *Setting aside Proceedings against Sheriff, for Irregularity.*
[See ante, 242.]

11. *Setting aside Proceedings on Bail-Bond.*
[See ante, 244.]

12. *Notice not to make Rule absolute.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Admitting the irregularity for which you have obtained a rule nisi in this cause, I give you notice not to proceed further to make the said rule absolute; and if you will deliver to me a bill of the costs already incurred by the motion, the plaintiff [or "defendant"] will forthwith pay the amount thereof, upon the same being taxed by the proper officer. Dated this — day of —, 1840.

To Mr. D. A. defendant's
[or "plaintiff's"] attorney.

P. A. plaintiff's
[or "defendant's"] attorney.

[See 2 Chit. Ar. Pr. 1050.]

13. *Notice not to appear to Mesne Process.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

I hereby give you notice not to appear to the writ of summons where- with you have been served [or "issued"] in this cause. Dated this — day of —, 1840.

To Mr. C. D. the above-named
defendant.

P. A. plaintiff's attorney.

[See 2 Chit. Ar. Pr. 1050.]

CHAPTER XVIII.

JUDGMENT OF NON-PROS.

1. *Judgment of Non-pros., for not declaring on a Writ of Summons.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A.D. — (the day on which the judgment is signed.) Witness — (name of chief justice, or in Exchequer, of chief baron.)

— (the county whereof defendant is described in the writ,) (to wit.) C. D. according to the form of the statute in such case made and provided, was on the — day of —, A.D. —, served with a copy of a writ of summons [or "alias," or "pluries writ of summons," as the case was] issuing out of the court of Queen's Bench [or "C. P.," or "Exch. of Pleas"] against the said C. D., at the suit of A. B., dated the — day of —, A.D. —, and directed to the said C. D., and whereby our lady the queen commanded the said C. D. that within eight days after the service of that writ on him, inclusive of the day of such service, he should cause an appearance to be entered for him in the said court in an action on promises [or "debt," as in the writ,] at the suit of the said A. B. : And the said C. D. within that time, that is to say, on —, by D. A. his attorney, [or "in person,"] caused an appearance to be entered for him in the said court in the said action, according to the form of the statute in such case made and provided: And the said A. B. hath not declared in the said court in the aforesaid action, against the said C. D. before the end of this present — term [or "of — term then next ensuing"], being the next term after the appearance of the said C. D. at the suit of the said A. B.* (a) Therefore, on —, it is considered that the said A. B. take nothing by his said writ, but that he be in mercy &c. And it is further considered by the court here, that the said C. D. do recover against the said A. B. £—, for his costs and charges by him laid out about his defence in this behalf, by the said court here adjudged to the said C. D. and with his assent, according to the form of the statute in such case made and provided; and that the said C. D. have execution thereof &c. [In the margin of the roll, opposite the words, "Therefore it is considered &c.," write "Judgment signed the — day of —, 1840;" also in the margin of the roll opposite the words, "and that the said C. D. have execution," write "Execution."]

[See 2 Chit. Ar. Pr. 1052.]

(a) See 2 Chit. Ar. Pr. 1052; 1 Id. 207.

2. *Judgment of Non-pros., for not declaring on a Writ of Capias*(a).

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A.D. — (the day on which the judgment is signed.) Witness — name of chief justice, or in Exchequer, of chief baron.) Ellenborough.

— (the county to the sheriff of which the writ was directed,) (to wit.)

C. D. was on the — day of —, A.D. —, arrested by virtue of a writ of capias [or "alias writ of capias," or "pluries writ of capias," as the case was] issuing out of the court of Queen's Bench [or "C. P." or "Exch. of Pleas"] against the said C. D. at the suit of A. B., dated the — day of —, A. D. —, and directed to the sheriff of the county of —, and whereby our lady the queen commanded the said sheriff that he should omit not by reason of any liberty in his bailiwick, but that he should enter the same, and take the said C. D. of —, if he should be found in his bailiwick, and him safely keep until he should have given the said sheriff bail or made deposit with him according to law in an action on promises [or "debt," as in the writ] at the suit of the said A. B., or until the said C. D. should by other lawful means be discharged from the said sheriff's custody; and our lady the queen thereby required the said C. D. to take notice, that within eight days after execution thereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in the said court to the said action, and that in default of his so doing, such proceedings might be had and taken as were mentioned in the warning thereunder written or indorsed thereon; and the said C. D. within that time, to wit, on —, caused special bail to be put in for him in the said court to the said action by D. A. his attorney, at the suit of the said A. B., and the said A. B. hath not declared [&c. conclude as in the preceding form.]

[See 2 Chit. Ar. Pr. 1052.]

3. *Judgment of Non-pros., for not declaring, where Defendant was discharged out of Custody on entering a Common Appearance* (a).

[Same title and commencement of entry as in preceding form.]

— to wit. C. D. was, on the — day of —, A.D. 1840, arrested by the name of E. D. by virtue of a writ of capias [&c. as in the preceding form, to the end of the recital of the writ and then thus:] And the said C. D. afterwards, to wit, on the — day of —, A. D. 1840, was discharged out of the custody of the sheriff of —, by virtue of a rule or order of the same court, upon entering a common appearance by the said D. A. his said attorney, at the suit of the said A. B. And the said A. B. hath not declared [&c. conclude as in the preceding form, supra, No. 1.]

4. *Judgment of Non-pros., for not declaring on a Bailable Writ, issued into a County Palatine* (b).

[Same title and commencement of entry as in form, supra, No. 2.]

— to wit. C. D. was, on the — day of —, in the year of our

(a) This form is retained as it may still be of service in some cases, though it seems to be inapplicable to an action in which a capias has been sued out under 1 & 2 Vict. c. 110, in which case it would seem that the non-pros. should be founded on the

writ of summons, which by the 1 & 2 Vict. c. 110, s. 2, is now in all cases the commencement of the action. See the observations as to the declaration, ante.

(b) See as to Durham, ante, 21, n. (b).

Lord 18—, arrested by virtue of a writ or mandate, directed to the sheriff of the county palatine of Lancaster, [or “Durham,”] and grounded upon a writ of capias, issuing out of the court of —, against the said C. L., and directed to the chancellor of the said county palatine, and whereby [&c. proceed as in other cases, setting out the writ &c., see form, ante, 607, No. 2.]

5. *Judgment of Non-pros., for not declaring in Debt qui tam, in Q.B.*

[Same title and commencement as in form, ante, 607, No. 2.]

— to wit. A. B. who brought a writ of our lady the queen, as well for our said lady the queen as for himself, against C. D. in an action of debt on statute, hath not prosecuted his writ aforesaid: Therefore it is considered that the said A. B. take nothing by his said writ, but that he be in mercy &c: And it is further considered [&c. conclude as ante, 606, No. 1.]

6. *Judgment of Non-pros. to the whole Action, for not replying.*

[Proceed as in an entry of an issue, see ante, 606, No. 1, to the end of defendant's plea, and then thus:] And upon this the defendant prays that the plaintiff may reply to the aforesaid plea of the defendant, and hereupon a day is given by the court here to the plaintiff before our lady the queen at Westminster, until the — day of — (see the rule to reply), that is to say, for the plaintiff to reply to the aforesaid plea of the defendant, the same day is given to the defendant, at the same place*. At which day before our said lady the queen at Westminster comes the defendant, by his attorney aforesaid; and the plaintiff, although at that day solemnly called, comes not, nor hath he replied to the aforesaid plea of the defendant, nor doth he further prosecute his said suit: Therefore it is considered by the court here that the plaintiff take nothing by his said writ, but that he (a) be in mercy &c. And it is further considered by the court here that the defendant do recover against the plaintiff £— for his costs and charges by him laid out about his defence in this behalf, by the said court here adjudged to the defendant, and with his assent, according to the form of the statute in such case made and provided, and that the defendant have execution thereof &c. [Add the usual marginal notes, as directed at the end of the form, ante, 606, No. 1.]

[See 2 Chit. Ar. Pr. 1054.]

7. *The like, for not replying to a Part of the Causes of Action.*

[Proceed as in the preceding form, to the asterisk*, and then thus:] At which day comes here the defendant by his attorney aforesaid, and the plaintiff also comes as to the plea [&c. here copy the replication], and the plaintiff, although at that day solemnly called, comes not to reply, nor hath he replied, nor sent any excuse for his not replying to the said plea of the defendant, by him first above pleaded, nor doth he further prosecute his suit as to the said causes of action to which the said plea of the defendant by him firstly above pleaded is pleaded, therefore it is considered by the court here that the plaintiff take nothing by his said writ with respect to the said causes of action to which the said plea of the

(a) The insertion of the words, “and his pledges to prosecute,” is no longer requisite.

defendant by him firstly above pleaded is pleaded, but that he be in mercy &c. in respect of the same ; and it is further considered by the court that the defendant do recover against the plaintiff £—— for his costs and charges by him laid out about his defence in this behalf with respect to the said causes of action, to which the said plea of the defendant by him firstly above pleaded is pleaded, by the said court here adjudged to the defendant, and with his consent, according the form of the statute in such case made and provided, and that the defendant have execution thereof &c.

8. Judgment of Non-pros. in Q. B. for not delivering a Particulars of Plaintiff's Demand under a Judge's Order, after Plaintiff had declared (a).

[*Proceed as in a judgment of non-pros. for not replying, as in the form ante, 608, No. 6, to the end of the declaration, and then thus :*] And thereupon afterwards, to wit, on the —— day of ——, —— term aforesaid, it was ordered by the right honourable sir ——, knight, one of her majesty's justices assigned to hold pleas in the said court of our said lady the queen before the queen herself [*or in C. P. "in the court of our lady the queen before her majesty's justices of the Bench," or in Exch. "in the court of our lady the queen before the barons of her Exchequer"*] at Westminster aforesaid, that the said plaintiff's attorney or agent should deliver to the said defendant's attorney or agent an account in writing of the particulars of the plaintiff's demand for which this action was brought, and that in the mean time all further proceedings in this cause should be stayed, the defendant undertaking in the event of pleading to plead issuably (*this should correspond with the first order for particulars*): And thereupon afterwards, to wit, on the —— day of ——, in the year aforesaid, it was ordered by the said ——, such justices as aforesaid (*or by another judge, if the fact*) that the said defendant should have a month's time to plead after the delivery of the particulars of the said plaintiff's demand, pleading issuably; and hereupon a day is given to the said plaintiff before our said lady the queen at Westminster aforesaid, until the —— day of —— next, that is to say, for the said plaintiff's attorney or agent to deliver the particulars aforesaid to the said defendant's attorney or agent, and the same day is given to the said defendant at the same place: At which day before the said lady the queen at Westminster comes as well the said defendant as the said plaintiff by their respective attornies aforesaid, and the said attorney or agent for the said plaintiff hath not delivered the particulars aforesaid to the said attorney or agent for the said defendant; and thereupon afterwards, to wit, on the —— day of ——, in the year aforesaid, it was ordered by the said sir ——, knight, her majesty's justice as aforesaid assigned to hold pleas in the said court of our said lady the queen before the queen herself at Westminster aforesaid (*or by another judge, if the fact*), that the said plaintiff's attorney or agent should within [ten] days deliver to the said defendant's attorney or agent an account in writing of the particulars of the said plaintiff's demand, for which the said action was brought, and that in default thereof the defendant should be at liberty to sign judgment of non-

(a) It seems doubtful whether the court or a judge can give leave to sign judgment of non-pros. for not delivering particulars. See 2 Chit. Ar. Pr. 1032. On the general rule that the

court will not compel a non-pros., it would seem that such a judgment would be irregular. Orders have, however, been made incorporating leave to sign such a judgment.

pros., the defendant undertaking, in the event of pleading, to plead issuably (*this should correspond with the subsequent order*): And although notice of the said last-mentioned order was on the day and year last aforesaid given to the said attorney of the said plaintiff, and although the said [ten] days from the day and year last aforesaid hath elapsed, yet the said attorney of the said plaintiff hath not, nor hath the said plaintiff or his agent, delivered to the said defendant's attorney or agent, or the said defendant, any account in writing of the particulars of the said plaintiff's demand for which this action was brought: Therefore it is considered by the court here that the said plaintiff take nothing by his said writ, and that he be in mercy &c. And it is further considered by the court here that the said defendant do recover against the plaintiff £—— for his costs and charges by him laid out about his defence in this behalf by the court here adjudged to the said defendant and with his assent, according to the form of the statute in such case made and provided, and that the said defendant have execution thereof &c.

[See 2 Chit. Ar. Pr. 1055.]

9. Docket Paper in Q. B.

The entry [*or "further entry"*] of *D. A.* gentleman, one &c. on the —— day of ——, — Victoria.

—— (*Venue.*) Non-pros. for not declaring [*or "replying," or "entering the issue"*] between *A. B.* plaintiff and *C. D.* defendant, for costs. } Roll. ———.

10. Fieri Facias on a Non-pros. for not Declaring.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of ——, greeting: We command you that of the goods and chattels of *A. B.* in your bailiwick you cause to be made £——, which *C. D.* lately in our court before us [*or in C. P. "before the justices of our bench," or in Exch. "before the barons of our Exchequer"*] at Westminster recovered against the said *A. B.* for his costs and charges by him laid out and expended in and about his defence to a certain action on promises [*or "of debt," or as the case may be*] theretofore commenced, and pending in our said court by the said *A. B.* against the said *C. D.** for that the said *A. B.* had not declared in the aforesaid action against the said *C. D.*, according to the course and practice of the said court, or further prosecuted the same, whereof the said *A. B.* is convicted, as appears to us of record, [*or in C. P. omit the words "as appears to us of record," or in Exch. say "as by inspecting the rolls of our said Exchequer appears to us,"*]* together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of —— A. D. ——, on which day the judgment aforesaid was entered up, [*or if entered up before 1st day of Oct. 1838, say "from the 1st day of October, A. D. 1838, and omit the words "on which day the judgment aforesaid was entered up,"*] and have that money, together with such interest as aforesaid, before us [*or in C. P. "before our said justices," or in Exch. "before the barons of our said Exchequer"*] at Westminster, immediately after the execution hereof, to be rendered to the said *C. D.* for his costs and charges and interest aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this writ make appear to us [*or in C. P. "to our*

said justices," or in *Exch.* "to the said barons"] at Westminster, immediately after the execution thereof, and have there then this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

[Indorse the writ as directed, ante, 149, No. 1.]

[See 2 *Chit. Ar. Pr.* 1056.]

11. *The like, for not replying.*

[Proceed as in the preceding form to the* and then thus:] for his costs and charges by him laid out in and about his defence in a certain action on promises [or "of debt," as the action is] lately depending in our said court at Westminster, at the suit of the said *A. B.* against the said *C. D.*, for that the said *A. B.* had not replied to a certain plea [or "pleas"] then lately pleaded by the said *C. D.* in the said action, or further prosecuted the same; whereof [&c. conclude as in the preceding form].

12. *The like, for not Surrejoining.*

[Proceed as in the form, ante, 610, No. 10, to the*, and then thus:] for his costs and charges [&c. as in preceding form], for that the said *A. B.* had not surrejoined to certain rejoinders then lately made by the said *C. D.* in the said action, or further prosecuted the same; whereof [&c. conclude as in the form, ante, 610, No. 10].

13. *Non-pros. in Error.*

[In *Exchequer Chamber*, ante, 114; in *House of Lords*, ante, 127, &c.; in *Queen's Bench*, ante, 137; in *error coram nobis*, ante, 144.]

14. *Non-pros. in Ejectment.*

[See the form, ante, 377.]

15. *Non-pros. in Replevin.*

[See the forms, ante, 426, 442.]

16. *Non-pros. for not Declaring after Outlawry.*

[See ante, 557.]

CHAPTER XIX.

DISCONTINUANCE.

SECTION I.—CONTINUANCES (a).

Of Mesne Process.

By vicecomes non misit breve, or by plaintiff's attorney's return of non est inventus &c. [See ante, 539.]

SECTION II.

RULE TO DISCONTINUE.

1. *Rule to discontinue before Plea pleaded.*

_____, the _____ day of _____, in the year of our Lord _____.
B. It is ordered, upon payment of costs to be taxed by one of
against } the masters that this action be discontinued.
D. } By the Court.
Side bar.

[See 2 Chit. Ar. Pr. 1057.]

2. *The like, after Plea pleaded.*

[Proceed to the end of the common rule, supra, No. 1, and then thus:]
the plaintiff hereby undertaking to pay the said costs to be so taxed, and
consenting that if they are not paid within four days after taxation, the
defendant shall be at liberty to sign judgment of non-pros.

Side bar.

By the Court.

[See 2 Chit. Ar. Pr. 1057.]

3. *Entry of the Discontinuance on the Roll.*

[Proceed as in the entry of an issue, see the form, ante, 43, No. 1, to
the end of the last pleading, &c. and then in a new line, thus:]

Afterwards, to wit, on _____, come the parties aforesaid by their re-

(a) See 2 Chit. Ar. Pr. 1057. By rule of H. T. 4 Will. 4, r. 2, the entry of continuances must now be omitted.

spective attornies aforesaid; and the plaintiff doth not further prosecute his said writ with effect, but voluntarily permits his said suit to be discontinued: Therefore it is considered that [*&c. conclude as in the judgment, ante, 606, No. 1.*]

[*See 2 Chit. Ar. Pr. 1059.*]

4. *Execution for Defendant.*

[*Same as ante, 201, 203.*]

CHAPTER XX.

CASSETUR BREVE.

1. *Entry thereof on Roll.*

[*Proceed as in the entry of an issue, as in the form, ante, 43, No. 1, to the end of the plea, and then on a new line thus:*]

And hereupon on — the plaintiff, inasmuch as he cannot deny the matters by the defendant above pleaded, prays judgment, and that the said writ of the plaintiff may be quashed, to the intent that he may sue out a better writ against the defendant: Therefore it is considered by the court here that the said writ be quashed &c.

[*See 2 Chit. Ar. Pr. 1060.*]

2. *Docket Paper.*

The entry [*or "further entry"*] of *P. A.* gentleman, one &c. the — day of —, — Victoria, 1840.

(*Venue.*) Entry of cassetur breve, between *A. B.* plaintiff and *C. D.* defendant, on a } Roll —.
plea in abatement.

CHAPTER XXI.

PUTTING OFF THE TRIAL.

1. *Notice of Motion.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice that this honourable court will be moved on — next, or as soon after as counsel can be heard, that the trial of this cause may be put off until —, on account of the absence of a material witness, and that in the meantime all proceedings herein be stayed. Dated this — day of —, 1840.

D. A. —'s attorney.

To Mr. *P. A.* —'s attorney.

[*See 2 Chit. Ar. Pr. 1068.*]

2. *Affidavit.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

C. D. of —, tailor, the above-named defendant, maketh oath and saith, that issue was joined in this cause on the — day of — last past, and that notice was given for the trial thereof at the — sitting within [*or* "at the sittings after"] — term: And this deponent further saith, that *W. W.* late of —, is a material witness for him this deponent in the said cause, as he is advised and believes, and that he cannot safely proceed to the trial thereof without the testimony of him the said *W. W.* And this deponent further saith, that after the notice of trial was so given as aforesaid, and in order to prepare for such trial, he this deponent [*&c. state fully the diligent inquiries that have been made after the witness, and the time when he is likely to return and attend, and other facts to induce the court to grant the application; as to which see 2 Chit. Ar. Pr. 1068.*]

Sworn [*&c. as ante, 207.*]

C. D.

[*See 2 Chit. Ar. Pr. 1068.*]

CHAPTER XXII.

TRIAL BY PROVISIO.

1. *Notice of Trial by Proviso.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice of trial by proviso in this cause for [*&c. proceed as in other cases: see the forms, ante, 50, 51.*] Dated this — day of —, 1840.

D. A. defendant's attorney [*or "agent."*]

To Mr. *P. A.* plaintiff's attorney [*or "agent."*]

[*See 2 Chit. Ar. Pr. 1066.*]

2. *Jury Process.*

[*The jury process is the same as in ordinary cases, as ante, 68 and 71, excepting that in the distringas, after the words "many defaults," and in the habeas corpora, after the words "to make that jury," you insert this clause: "provided always that if two writs shall come to you thereupon, you shall then execute and return one of them only; and have you there &c."*]

[*See 2 Chit. Ar. Pr. 1066.*]

CHAPTER XXIII.

COSTS FOR NOT PROCEEDING TO TRIAL.

1. *Affidavit to support Motion for.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

D. A. of —, gentleman, attorney for the above-named defendant, maketh oath and saith, that issue was joined in this cause on the — day of — last, and notice of trial given thereon for the sitting after — term last, [*or* "for the last assizes holden at —, in and for the county of —," *according to the fact :*] And this deponent further saith, that the above-named plaintiff did not proceed to the trial of the said action, nor countermand such notice in due time, according to the rules of this honourable court.

Sworn [*&c. ante*, 207.]

D. A.

[*See 2 Chit. Ar. Pr.* 1068.]

2. *Rule of Court thereon, in Q. B. or C. P. (a)*

The — day of —, A. D. —.

B. } Upon reading the affidavit of *D. A.* it is ordered that the attor-
v. } nies of both parties shall attend the master, and he shall examine
D. } the matter, and tax the defendant his costs, for that the plaintiff
hath not proceeded to trial pursuant to his notice; which costs, when
taxed, shall be paid by the plaintiff, if it shall appear to the master that
costs ought to be paid. Upon the motion of Mr. —.

By the Court.

[*See 2 Chit. Ar. Pr.* 1069.]

3. *The like, in Exchequer (b).*

On —, the — day of —, A. D. —.

B. } Upon the motion of Mr. —, counsel for the defendant, and
v. } upon reading the affidavit of Mr. —, gentleman, it is ordered
D. } that the plaintiff do pay to the defendant his costs, to be taxed by
one of the masters, for that the plaintiff did not proceed to the trial of
this cause at the last assizes for the county [*or* "city"] of —, [*or*
"city," *or* "sittings," *&c. see supra*,] pursuant to notice, unless cause be
shown to the contrary on — the — day of — instant [*or* "next
coming."]

By the Court.

(a) See the form in ejectment, *ante*, 381.

(b) See 3 Dowl. 177; 2 Chit. Ar. Pr. 1068.

CHAPTER XXIV.

JUDGMENT AS IN CASE OF A NONSUIT.

1. *Notice of Motion in order to operate as a Stay of Proceedings (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice that this honourable court will be moved to-morrow, or as soon after as counsel can be heard, that the like judgment may be entered for the defendant as in the case of a nonsuit, pursuant to the statute in that case made and provided. Dated this — day of —, 1840.

To Mr. P. A. plaintiff's attorney

D. A. defendant's attorney

[or "agent."]

[or "agent."]

[See 2 Chit. Ar. Pr. 1075.]

2. *Affidavit where Notice of Trial but no Notice of Motion has been given.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

D. A. of —, gentleman, attorney for the above-named defendant, maketh oath and saith, that issue was joined in this cause on the — day of — [as of — term] last, and notice of trial, on the part of the above-named plaintiff, for the — sitting in [or "for the sittings after"] the said term [or "for the last assizes holden at —, in and for the county of —"], and that the said plaintiff did not proceed to the trial of this cause in pursuance of his said notice. [Here state the costs, if any, incurred by reason of plaintiff's giving notice of trial, and failing to try.]

Sworn [&c. as ante, 207.]

[See 2 Chit. Ar. Pr. 1075.]

3. *The like, where Notice of Motion has been given.*

[Proceed as in the preceding form to the end, and then thus:] And this deponent further saith, that he did, on the — day of — instant [or "last"] personally serve Mr. P. A., attorney for the plaintiff in this cause, with a true copy of the notice hereto annexed; [or if the notice of motion was not personally served on the attorney, "did on the — day of — instant (or 'last') serve a true copy of the notice hereto annexed (annex it) on Mr. P. A., attorney for the plaintiff in this cause, by leaving the same at the house of the said P. A. in —, with his clerk (or 'servant') there."]

Sworn [&c. ante, 207.]

D. A.

4. *The like, where Notice of Trial has not been served.*

[Proceed as in either of the forms, supra, Nos. 2, 3, as the case may be, omitting the notice of trial, and stating "that the said plaintiff hath not as yet proceeded to the trial of the said cause."] See 2 Chit. Ar. Pr. 1072 to 1075, as to when notice of trial need not be served.

(a) In the Exch. a two days' notice is requisite, 3 Dowl. 673.

5. *Rule Nisi thereon.*

_____ the _____ day of _____, A. D. ____.

B. } Upon reading the affidavit of *D. A.* it is ordered, that the plain-
 v. } tiff, upon notice of this rule to be given to his attorney, shall upon
 D. } _____ show cause why the like judgment should not be given for the
 defendant as in the case of a nonsuit, pursuant to the statute in such case
 made and provided. Upon the motion of Mr. _____.

By the Court.

6. *Rule absolute thereon.*

_____ the _____ day of _____, A. D. ____.

B. } Upon reading the rule made in this cause on _____, in _____ term
 v. } last past, and the affidavit of *D. A.*, it is ordered, that the like judg-
 D. } ment be entered for the defendant as in the case of a nonsuit, pur-
 suant to the statute in such case made and provided. Upon the motion
 of Mr. _____.

By the Court.

[See 2 Chit. Ar. Pr. 1075.]

7. *Rule for discharging Rule Nisi, on peremptory undertaking, in Q. B. or C. P.*

_____ the _____ day of _____, A. D. ____.

B. } Upon reading the rule made in this cause on _____, and the affi-
 v. } davit of *P. A.*, and upon the undertaking of the plaintiff to bring
 D. } on the issue in this cause to be tried at the _____ sittings [or "next
 assizes," &c.] it is ordered that the said rule be discharged; and further
 time is allowed to the said plaintiff to bring on the issue to be tried, pur-
 suant to his undertaking; and the same is then peremptorily to be brought
 on to be tried. Upon hearing Mr. _____ for the plaintiff, and Mr. _____
 for the defendant.

By the Court.

[See 2 Chit. Ar. Pr. 1078.]

8. *The like, in Exchequer.*

_____ the _____ day of _____, A. D. ____.

B. } Upon the motion of Mr. _____ of counsel for the plaintiff, and
 v. } reading the rule made in this cause of the _____ day of _____ instant
 D. } [or "last,"] and the affidavit of *P. A.* the plaintiff's attorney, and
 hearing of Mr. _____ of counsel for the defendant, it is ordered that the
 said rule be discharged, [or "with costs,"] the plaintiff peremptorily un-
 dertaking to try this cause at the next sittings for _____ [or "assizes for
 the county of _____."]

By the Court.

9. *Entry of a Stet Processus.*

[Proceed as in the entry of an issue, see the form, ante, 43, No. 1, to the end of the award of the venire, and then thus:] At which day come here the parties aforesaid, by their attornies aforesaid; and hereupon it is ordered by the court here, with the consent of the parties aforesaid, that all further proceedings herein be forthwith stayed; and let them be stayed accordingly, &c.

[See 2 Chit. Ar. Pr. 1079.]

10. *Affidavit for Judgment as in case of a Nonsuit, after a peremptory undertaking (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

D. A. of —, attorney for the defendant in this cause, maketh oath and saith, that this honourable court was moved in last — term for judgment as in case of a nonsuit; and upon showing cause, the plaintiff peremptorily undertook to bring on the said cause to be tried at the sittings after the said term [or "at the — sittings within this present — term;"] whereupon the annexed rule was made: And this deponent further saith, that the plaintiff hath not proceeded to the trial of the said issue, in pursuance of his said undertaking. [If a notice of motion has been served, add "And this deponent further saith, that he did on the — day of — last (or 'instant') personally serve," [&c. as in form, ante, 617, No. 3.]

Sworn [&c. ante, 207.]

D. A.

[See 2 Chit. Ar. Pr. 1078.]

11. *Entry of Judgment as in case of a Nonsuit.*

[Proceed as in an entry of an issue, see the form, ante, 43, No. 1, and after copying the issue &c. to the end of the award of the venire facias, proceed thus:] At which day comes here the defendant by his said attorney; and the plaintiff, although solemnly called, comes not: And it appearing to the court here, that the plaintiff hath neglected to bring the issue above joined on to be tried, according to the course and practice of the said court; therefore, according to the form of the statute in such case made and provided, it is considered that the plaintiff take nothing by his said writ, but that he be in mercy &c.; and that the defendant do go thereof without day &c. And it is further considered [&c. conclude as in a judgment of nonsuit, ante, 87.]

12. *Fi. fa. on Judgment as in Case of a Nonsuit.*

[Proceed as in the form, ante, 610, No. 10, except that instead of the words of that form between the asterisks *, you insert the following:] For that the said *A. B.* had neglected to bring a certain issue [or "certain issues"] of fact joined in the said action between the said *A. B.* and *C. D.*, on to be tried according to the course and practice of the said court.

(a) The rule on this affidavit is nisi in the first instance.

CHAPTER XXV.

NOLLE PROSEQUI AND RETRAXIT.

1. *Entry of Nolle Prosequi to the whole Declaration.*

[*Proceed as in an issue, as in the form, ante, 43, No. 1, to the end of the pleadings, as far as they have gone, and then, on a new line, thus:*] And hereupon, on —, the plaintiff, inasmuch as he cannot deny the matters by the defendant above pleaded, now freely here in court confesses that he will not further prosecute his suit against the defendant. Therefore it is considered [*&c. conclude as in a judgment of nonsuit, as in form, ante, 87, No. 3.*]

[*See 2 Chit. Ar. Pr. 1081.*]

2. *The like, to a particular Count or Counts (a).*

[*Proceed as in an issue, as in the form, ante, 43, No. 1, to the end of the pleas; and after replying to the defendant's pleas with respect to the other counts, enter the nolle prosequi thus:*] And as to the [third and last] counts of the said declaration, the plaintiff saith that he will not further prosecute his suit against the defendant in respect of the causes of action in those counts mentioned, or any or either of them; therefore as to the said causes of action in the said [third and last] counts of the said declaration mentioned, let the defendant be acquitted and go thereof without day &c. [*The entry of the judgment for costs would be thus: "And whereupon, on — it is considered by the court here that the defendant do recover against the plaintiff £—— for his costs and charges by him about his defence in this behalf as to the said third and last counts of the said declaration laid out and expended, by the court here adjudged to the defendant, with his assent, according to the form of the statute in such case made and provided."* And that the defendant have execution thereof &c. (b)]

3. *The like, to a particular Part of the Declaration, to which Defendant pleads, but suffers Judgment by Default as to the rest.*

[*Proceed as in issue, as in the form, ante, 43, No. 1, to the end of the plea, and then enter the nolle prosequi thus:*] And as to the said causes of action in the said declaration mentioned, except as the sum of [£30] parcel of the said several sums of money in the said declaration mentioned, the plaintiff saith that he will not prosecute his suit against the defendant in respect of the causes of action in the said declaration mentioned, or any of them, except as to the said sum of [£30] parcel &c. as

(a) See the form of a judgment by nil dicit as to one count, and nolle prosequi as two others, after a plea in debt on statute, *ante*, 343, See 2 Chit. Ar. Pr. 1081.

(b) 3 & 4 Will. 4, c. 42, s. 33. If the defendant's costs exceed those of plaintiff, then enter an award of execution for them.

aforesaid; therefore as to those causes of action let the defendant be acquitted and go thereof without day &c. And whereupon on — it is considered [&c. state the judgment as to the defendant's costs, as in the preceding form.]

4. *The like, as to one of several Defendants.*

Proceed as in an issue, as in the form, ante, 43, No. 1, to the end of the plea; and after replying to the pleas of the other defendants, enter the nolle prosequi thus:] And on — as to the plea of the defendant *E. F.* by him above pleaded, the plaintiff saith, that he will not further prosecute his suit against the said *E. F.*: Therefore let the said *E. F.* be acquitted of the premises in the said declaration mentioned, and go thereof without day &c: And it is further considered [&c. state the judgment as to the defendant's costs, as in the form, ante, 620, No. 2.]

[See 2 Chit. Ar. Pr. 1082.]

5. *Execution for Defendant for the Costs.*

*Same as usual as in fi. fa., as in form, ante, 201, No. 1, to the *; or as in a ca. sa., as in form, ante, 202, No. 4, to the *, and then thus:]* For his costs and charges by him about his defence laid out and expended in a certain action on promises, [or "debt," as the action is,] lately depending in our said court at Westminster, at the suit of the said *A. B.* against the said *C. D.*, for that the said *A. B.* hath not further prosecuted that suit in respect of a part of the causes of action in the declaration in that action by the said *A. B.* alleged against the said *C. D.*"] whereof the said *A. B.* is convicted &c. [Conclude as in the fi. fa. ante, 201, or as in the ca. sa. ante, 202.]

6. *Entry of a Retraxit.*

[See the form 2 Sellon, 338. See 2 Chit. Ar. Pr. 1084.]

CHAPTER XXVI.

REMITTITUR DAMNA.

In assumpsit of part damages, after return of inquiry, ante, 331, No. 7.—In assumpsit as to particular counts, ante, 343, No. 8.—In debt, of part of the sum demanded, ante, 321, No. 12.—In replevin, of damages, by defendant, ante, 440, No. 73.—In ejectment, ante, 367, No. 20. And see, generally, 2 Chit. Ar. Pr. 1085.

CHAPTER XXVII.

NEW TRIAL.

1. *Rule Nisi for a New Trial in Q. B.*

In the Queen's Bench.

— the — day of —, A. D. —.
 B. } It is ordered that the plaintiff [or "defendant"] upon notice of
 v. } this rule to be given to his attorney, shall upon — show cause
 D. } why the verdict [or "nonsuit"] obtained in this cause should not
 be set aside, and a new trial had between the parties; and in the mean-
 time that proceedings be stayed. Upon the motion of Mr. —.

By the Court.

[See 2 Chit. Ar. Pr. 1099.]

2. *The like, for setting aside a Verdict, and entering a Nonsuit, or for a New Trial, in C. P.*

In the Common Pleas.

— the — day of —, A. D. —.
 B. } Upon reading the record of the issue joined between the said
 v. } parties, it is ordered that the plaintiff, upon notice of this rule to be
 D. } given to his attorney or agent, shall show cause to this court on
 —, why the verdict obtained in this cause should not be set aside and
 a nonsuit entered, or a new trial had between the said parties; and in
 the meantime, and until this court shall otherwise order, let the entry of
 final judgment upon the said verdict be stayed, and the *postea* remain in
 the hands of the associate. Upon the motion of Serjeant —.

By the Court.

3. *Rule Nisi in Exchequer for a New Trial, stating the Grounds of Motion.*

In the Exchequer of Pleas.

B. } It is ordered that the plaintiff [or "defendant"] upon notice of
 v. } this rule to be given to his attorney, shall upon — show cause
 D. } why the verdict [or "nonsuit"] obtained in this cause should not
 be set aside and a new trial had between the parties, on the grounds,
 1st, that the learned judge who tried the said cause rejected the evidence
 of W. W. a competent witness for the [defendant], on the ground that
 he was incompetent to give evidence for the [defendant]; 2dly, that the
 said judge misdirected the jury by stating [&c. stating the ground of mis-
 direction]; 3dly, that the verdict was against the weight of evidence,
 and against the directions of the said learned judge [&c. stating all the
 grounds on which the court gave leave to move,] and in the meantime all
 proceedings be stayed. Upon the motion of Mr. —.

By the Court.

4. *Note in Writing to be delivered to Chief Justice or Chief Baron, after obtaining Rule Nisi for a New Trial.*

In the Queen's Bench [*or "C. P. or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

I beg most respectfully to inform your lordship that this cause was tried at the sittings [after last — term at Guildhall, London,] before your lordship, on the — day of — last, and that a verdict was found for the said plaintiff for £ — damages; but that by leave of this honourable court a rule nisi for a new trial was obtained in this present — term, as appears by a copy of the rule nisi hereunto annexed; and I further inform your lordship, that the nature and grounds of the motion for the said rule nisi were and are as follows [*state concisely the grounds of motion to be relied upon in support of the rule nisi.*]

D. A. [defendant's] attorney.
(*his residence.*)

To the Right Hon. (*name of chief justice or chief baron.*)

[*See 2 Chit. Ar. Pr. 1102.*]

5. *Nisi Prius Record, &c. on New Trial.*

[*See the directions, 2 Chit. Ar. Pr. 1103.*]

CHAPTER XXVIII.

JUDGMENT NON OBSTANTE VEREDICTO.

1. *Entry of Final Judgment non obstante veredicto in Debt, where a Writ of Inquiry is unnecessary (a).*

[*Proceed to the end of the postea, and then thus:*] And hereupon the plaintiff prays judgment to be given for him that he do recover the debt in the action above-mentioned, and also his damages which he hath sustained, on occasion of the detaining the said debt, notwithstanding the verdict of the said jurors upon the issue above joined between the parties, and because it appears to the court here that the plea of the defendant by him above pleaded is not sufficient in law, and that the defendant hath therein confessed the cause of action in the declaration mentioned, and hath not sufficiently avoided the same, and that judgment ought to be given for the plaintiff notwithstanding the said verdict, therefore it is considered by the court here that the plaintiff do recover of the defendant his said debt, and also 1s. for his damages which he hath sustained, by reason of the detaining of the said debt, by the court here adjudged to the plaintiff, and with his assent; and the defendant in mercy &c. [*Add the usual marginal notes, as directed ante, 102, No. 1.*]

2. *Entry of Final Judgment for Plaintiff non obstante veredicto, where the damages have been assessed by a Writ of Inquiry (b).*

[*Proceed to the end of the postea, and then thus:*] And hereupon the plaintiff prays judgment to be given for him, that he do recover the damages by him sustained by reason of the premises in the said declaration mentioned, notwithstanding the verdict of the said jurors upon the issue above joined between the parties, and because it appears to the court here that the plea of the defendant by him above pleaded is not sufficient in law, and that the defendant hath therein confessed the cause of action in the declaration mentioned, and hath not sufficiently avoided the same, and that judgment ought to be given for the plaintiff notwithstanding the said verdict: Therefore, notwithstanding the said verdict of the said jurors upon the said issue above joined between the parties, it is considered that the plaintiff do recover of the defendant his damages by him sustained by reason of the premises in the declaration mentioned: But because it is unknown [*&c. proceed to set forth the award of a writ of inquiry, the return of the writ, and final judgment, as in the form of judgment by default, ante, 328, from the asterisk*, omitting that part of the form which adjudges costs to the plaintiff.*]

(a) See as to this 2 Chit. Ar. Pr. 1108. Neither party is entitled to costs of the issues on which judgment non obstante veredicto has been given, *id.* 1109.

(b) A writ of inquiry can only issue where plaintiff has judgment on the entire cause of action, if the defendant has a verdict as to part, there must be a venire de novo.

3. *Entry of Judgment for Plaintiff non obstante verdicto, where the Verdict on one of several Pleas was found for Defendant and the Jury assessed the Damages on another Plea.*

[*Proceed as in other cases to the end of the statement of the postea, and then thus:*] And hereupon the plaintiff prays judgment to be given for him upon the verdict aforesaid, that he do recover the damages, costs, and charges aforesaid, and other his costs and charges by him about his suit in this behalf expended, notwithstanding the said verdict of the said jurors upon the said second issue above joined between the parties, and because it appears to the court here that judgment ought to be given for the plaintiff, notwithstanding the said verdict upon the said second issue: Therefore, notwithstanding the said verdict of the said jurors upon the said second issue above joined between the parties, it is considered, that the plaintiff do recover of the defendant his said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed, and also £—— for his costs and charges by the court here adjudged of increase to the plaintiff, with his assent, which damages, costs and charges in the whole amount to £——, and the defendant in mercy &c.

CHAPTER XXIX.

ARREST OF JUDGMENT.

1. *Rule Nisi for arresting the Judgment, in Q. B. or Exchequer.*
In the Q. B. [or "Exch. of Pleas."]

— the — day of —, A. D. —.

As yet of — term, — Victoria.

B. } It is ordered that the plaintiff, upon notice of this rule to be given
v. } to his attorney, shall upon — show cause why the judgment on
D. } the verdict obtained in this cause should not be arrested, and in the
meantime that proceedings be stayed. Upon the motion of Mr. —.
By the Court.

2. *Rule for arresting Judgment, in C. P.*

In the Common Pleas.

— the — day of —, A. D. —.

As yet of — term, 3 Victoria.

B. } Upon reading the record of nisi prius between the said parties, it
v. } is ordered that the entry of final judgment upon the verdict found
D. } for the plaintiff on the trial of this cause be stayed, until this court
be moved on behalf of the plaintiff, and shall otherwise order. Let notice
of this rule be given to the plaintiff, his attorney or agent; and let notice
of the motion to discharge this rule be given to the defendant, his attorney
or agent. Upon the motion of Mr. —.
By the Court.

3. *Notice of Motion to discharge the Rule in C. P.*

In the Common Pleas.

A. B. against C. D.

Take notice, that this honourable court will be moved to-morrow, or
so soon after as counsel can be heard, that the rule made in this cause,
the — day of — last, may be discharged. Dated this — day of
—, 1840.

Your's &c.

P. A. plaintiff's attorney [or "agent."]

To Mr. D. A. defendant's attorney [or "agent."]

4. *Entry of Arrest of Judgment for Insufficiency of Declaration.*

[Proceed to the end of the postea, and then thus:] And hereupon, on
—, the plaintiff prays judgment to be given for him upon the verdict
aforesaid: but because it appears to the court here, that the writ and de-
claration aforesaid are not sufficient in law for the plaintiff to have or
maintain his aforesaid action thereof against the said defendant, therefore,
omitting to give judgment upon the verdict aforesaid, it is told to the
parties aforesaid, by the said court here, that they do go thereof without
day &c.

[See 2 Chit. Ar. Pr. 1110.]

CHAPTER XXX.

AMENDMENT.

1. *Summons by Defendant to obtain a Judge's Order to amend a Misnomer in Declaration.*

[Commence and conclude as usual,] to show cause why the declaration in this cause should not be amended at the plaintiff's cost, by inserting therein the defendant's right name, *E. D.*, instead of the wrong name, *C. D.*

[See 2 Chit. Ar. Pr. 652.]

2. *Affidavit in support thereof.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

A. B. plaintiff against *E. D.* (sued by the name of *C. D.*) defendant.

E. D. of —, the above-named defendant, against whom the above named plaintiff hath declared in this suit by the name of *C. D.*, maketh oath and saith, that his right and true name is *E. D.*, and that he has always been called or known by that name, and that he has never been called or known by the name of *C. D.*

Sworn [&c. as ante, 207.]

E. D.

3. *Rule to amend in Q. B. or Exchequer.*

In the Q. B. [or "Exch. of Pleas."]

— the — day of —, A. D. —.

B. } [Commence the rule as usual, see the forms, post, 649, and
v. } then thus:] It is ordered that the plaintiff have leave to amend his
D. } declaration, &c. [or "the defendant to amend his plea"] &c. by inserting [or "striking out"] &c. (stating the nature of the amendment) upon payment of costs, to be taxed by the master [if so directed.] Upon the motion of Mr. —.

By the Court.

4. *The like, after Argument in C. P.*

In the Common Pleas.

— the — day of —, A. D. —.

B. } Upon hearing counsel on both sides in the matter of the demurrer
v. } in law depending between the said parties, it is ordered that the
D. } plaintiff have leave to amend his declaration &c. [or "the defendant his plea" &c.] in this cause, upon payment to the defendant [or "plaintiff"] or his attorney, of his costs of and occasioned by such amendment, together with his costs of and occasioned by this application to the court, to be taxed by one of the masters of this court. On the motion of Serjeant — for the plaintiff; Serjeant — for the defendant.

By the Court.

[See generally 2 Chit. Ar. Pr. 1112.]

5. *Order for Amendment to be indorsed on Postea, under stat. 9 Geo. 4, c. 15; or 3 & 4 Will. 4, c. 42, s. 23.*

[See the form, ante, 101, No. 34.]

CHAPTER XXXI.

COSTS.

1. *Security for Costs.*

[*See forms as to, ante, 592.*]

2. *Costs for not proceeding to Trial.*

[*See forms as to, ante, 616.*]

3. *Suggestions for Costs.*

[*See forms as to, post, 642.*]

4. *Judgment for Defendant for.*

[*See forms, ante, 87, 606, &c.*]

5. *Certificate on R. G. H. 4 W. 4, that no distinct Subject-matter of Complaint or Defence was intended to be established, &c.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

A. B. } I do certify, that in my opinion no distinct subject-matter of
v. } complaint [*or "answer," or "defence"*] was bonâ fide intended
C. D. } to be established in respect of the [second] count [*or "plea"*] in
this cause. Dated the — day of —, 1840.

(*Judge's signature.*)

6. *Certificate on 3 & 4 W. 4, c. 42, s. 32. to deprive acquitted Defendants of Costs.*

[*See a form, ante, 97.*]

7. *Certificate on R. H. 4 W. 4, that a Document was proved to the Judge's Satisfaction.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

A. B. } I do hereby certify, that the within document was proved to my
v. } satisfaction on the trial of this cause, before me. Dated the —
C. D. } day of —, A. D. 1840.

(*Judge's signature.*)

8. *Certificate in Trespass under 22 & 23 Car. 2, c. 9, to be indorsed on the Record.*

I do certify, that in my opinion an assault and battery were sufficiently proved by the plaintiff against the defendant [or "that the freehold or title of the land in the within declaration mentioned was chiefly in question"] on the trial of this cause. Dated the — day of —, A. D. 1840.

(Judge's signature.)

[See 2 Chit. Ar. Pr. 1142.]

9. *Certificate to deprive Plaintiff of Costs under 43 Eliz. c. 6, to be indorsed on the Record.*

I do hereby certify, that the debt [or "damages"] to be recovered in the action within mentioned, does not amount to forty shillings. Dated the — day of —, 1840.

(Judge's signature.)

[See 2 Chit. Ar. Pr. 1139.]

10. *Affidavit of Increased Costs in a Special Jury Cause at Assizes.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

P. A. of —, gentleman, attorney for the above-named [plaintiff], and A. B. of —, the above-named [plaintiff], severally make oath and say; and first, this deponent P. A. for himself saith, that notice of trial was given in this cause for the last assizes to be holden at —, (*name of assize town*), in the county of —, and that the same was tried before a [special] jury of the said county; and that he did cause — subpoenas to be issued out, on the part of the said plaintiff: and that W. W. of —, T. W. of —, &c. [*names and additions of witnesses*] were all of them severally subpoenaed on the part of the plaintiff. And this deponent further saith, that all the said witnesses were material and necessary for the said plaintiff; and that their places of residence are distant from this deponent's residence — miles; and that the said W. W., T. W., &c. (*names of the witnesses*) were paid with their subpoenas the sum of one shilling each. And this deponent further saith, that the usual place of his abode is distant from — (*assize town*) aforesaid, — miles; and that he this deponent was necessarily absent from his place of abode, in going to, staying at, and returning from the assizes, — days; and that he did pay for conveying himself to and from — aforesaid, and for his expenses on the road, the sum of £—: And this deponent further saith, that the usual place of abode of the said W. W. is distant from — (*assize town*) aforesaid, — miles; and that the usual place of abode of the said T. W. is distant from — aforesaid, — miles (*mentioning each of the witnesses in the same manner*); and that the said W. W., T. W., &c. were necessarily absent from their respective places of abode, in going to, staying at, and returning from the said assizes, — days. And this deponent further saith, that he did also pay to the said W. W., T. W. &c. for for their loss of time, trouble, and expenses, the sum of £—: And this deponent further saith, that his brief consisted of — sheets of paper; and that he did pay to Mr. — with his brief, and his clerk, £—, and to Mr. — with his brief, and his clerk, £—, and also the following

court fees:—To the marshal for entering the cause, —; to the jury, tipstaff, and bailiff, —; to the marshal and crier, —; and to the associate —. And this deponent *P. A.* for himself saith, that he did pay for the expenses of himself and witnesses, at the said assizes, the sum of £—. *P. A.*
A. B.

Sworn [*&c. ante*, 207.]

[*See 1 Chit. Ar. Pr.* 1163.]

11. *The like, in a Town Cause, tried by a Common Jury.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

A. A. of —, gent., agent for the above-named plaintiff, and *P. A.* of —, in the county of —, gent., attorney for the above-named plaintiff, severally make oath and say; and first this deponent *A. A.* for himself saith, that the above cause was set down to be heard, and notice of trial given for the — sittings in — term, 1840, and that the same was from time to time made a remanet. That the said cause was in the paper and ready for trial at the adjourned sittings after — term last past, in and for the Guildhall of the city of London, (*if the cause was a special jury one, state the fact, as in the preceding form*). And this deponent *P. A.* for himself saith, that he caused four subpoenas to be issued out on behalf of the said plaintiff; and that *T. W.* of Liverpool, merchant, *J. J.* of —, gent., *J. M.* of —, clerk, *R. C.* of —, merchant, and *M. A.* of —, aforesaid, sugar-broker, were severally subpoenaed on the part and behalf of the said plaintiff. That this deponent, whose place of residence is distant from the city of London — miles, attended the trial of this cause as a necessary and material witness. And this deponent further saith, that —, the usual place of abode of the said *T. W.*, is distant from London — miles; that —, the usual place of abode of the said *J. M.*, is distant from London — miles; and that —, the usual place of abode of the said *R. C.* and *M. A.*, is distant from London — miles. And this deponent further saith, that the said several witnesses were all material and necessary witnesses in this cause, on behalf of the said plaintiff, and that it would not have been safe or prudent for the above cause to have been carried down for trial without their evidence; and that they and he, this deponent, attended for the purpose of being witnesses at the trial of this cause, and that they and he were witnesses in no other cause, as this deponent verily believes. And this deponent further saith, that he set out from —, in the county of —, his usual place of abode, and attended in London for the purpose of superintending the trial of this cause, and as a material witness for and on behalf of the plaintiff as before said. And this deponent further saith, that the adjournment day for the trial of common jury causes in and for the city of London, was fixed for Thursday, the — day of — last; and the said several witnesses were subpoenaed for that day; and that subsequently the said adjournment day was postponed by the order of the lord chief justice of this honourable court to — the — day of — last; and that the above-mentioned cause was second in the paper of that day. That in consequence of the probability of the cause being called on early in the morning of the said — day of —, it was necessary and expedient for all of the above-mentioned witnesses to be in London on — the — day of —; and they were requested by letter to be there accordingly. And this deponent *P. A.* for himself saith, that a short time before this cause would have been tried (and after the witnesses were sub-

pcœnaed and every preparation for trial made), viz. on the evening of the — day of the same month of —, he was served with a copy of a summons by the defendant's attornies to show cause why the defendant should not be at liberty to withdraw his pleas pleaded, and suffer judgment to go by default for £—, with interest, as therein mentioned. That this deponent did accordingly on the next day, viz. the — day of the said month of —, attend before the Honourable Mr. Justice —, who ordered that he, the said defendant, should be at liberty to withdraw his pleas, and that judgment should go against him by default. And this deponent *P. A.* for himself saith, that immediately upon such order being made, he did write letters and sent them by the next post to the said several witnesses above subpcœnaed, for the purpose of preventing their attendance, and requesting them not to attend upon such subpcœnas; but that such letters did not reach their destination in time to prevent either of the said witnesses attending. And this deponent further saith, that he had no means of preventing them so attending. That immediately after the above order was made, and on the arrival of the said witnesses, *T. W.*, *R. C.*, and *M. A.*, he this deponent communicated to them that their services would be dispensed with, and desired them, with the other witnesses *J. M.* and *J. J.*, to return to their respective homes as soon as possible. And this deponent further saith, that the said witness *T. W.* was necessarily absent in coming from and returning to his said place of abode — days; that the said *J. J.* was necessarily absent in coming from and returning to his said place of abode — days: that the said witness *J. M.* was necessarily absent in coming from and returning to his said place of abode — days: that the said witnesses *R. C.* and *M. A.* were necessarily absent in coming from and going to their places of abode — days; and that this deponent was necessarily absent in coming from and returning to his place of abode and entering into the necessary negotiation with the defendant's attornies — days. And this deponent *A. A.* for himself saith, that he delivered a brief in this cause, consisting of — sheets of paper, to Mr. —, and paid him therewith — guineas, and his clerk — shillings; and that he delivered another brief in this case to Mr. —, and paid him therewith — guineas, and his clerk — shillings; that he also paid to Mr. — a refresher fee of — guineas, and his clerk — shillings; and to Mr. —, for a refresher fee, — guineas, and his clerk — shillings. That in the opinion of this deponent it was necessary and expedient to have a consultation upon the necessary evidence in this cause with the above-mentioned counsel previous to the trial of this cause; and that he did have such consultation accordingly, and that he paid a consultation fee of — guineas to Mr. —, and to his clerk — shillings; and also a similar fee of — guineas to Mr. —, and to his clerk — shillings; that he paid to Mr. —, special pleader, for advising upon the evidence in this cause, — guineas. And this deponent *A. A.* for himself saith, that the said several sums of money following have been paid to and for the said several witnesses, that is to say the sum of £— to the said *T. W.*; the sum of £— to the said *J. J.*; the sum of £— to the said *M. A.*; and the sum of £— to the said *R. C.*, for their loss of time, trouble, and expenses. And that he, this deponent, has also paid for his travelling expenses the sum of £—, and that he is entitled to the sum of — guineas per diem, during the said period of — days as aforesaid, making together with his said travelling expenses the sum of £—.

Sworn [&c. as ante, 207.]

12. *Notice of intended Taxation of Costs.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Take notice, that one of the masters will tax the costs between the parties in this cause to-morrow, [or "on — next,"] at the hour of — o'clock of the — noon. Dated this — day of —, 1840.

Your's &c.

To Mr. D. A. [defendant's]
attorney, [or "agent."]

P. A. [plaintiff's] attorney,
[or "agent."]

[See 1 Chit. Ar. Pr. 1162.]

13. *Affidavit of Demand and Refusal of Costs, when payable to the Attorney, to obtain an Attachment for Non-payment of.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

P. A. of —, attorney for the above-named plaintiff A. B. in this suit, and A. B. of —, severally make oath and say, and first this deponent P. A. for himself saith, that he did on —, the — day of — last [or "instant"] personally serve the above-named [defendant] with a true copy of the rule, and the master's allocatur thereon hereunto annexed, and at the same time showed him the said original rule and allocatur; and that this deponent then demanded of him the costs allowed by the master on the said rule; but that the said [defendant] did not then, or at any time since, pay the same to this deponent: And this deponent A. B. for himself saith, that he hath not received the said costs or any part thereof, but the same now remain due and unpaid to this deponent.

Sworn [&c. ante, 207.]

P. A.

A. B.

14. *Rule for Attachment, for Non-payment of Costs in C. P.*

In the Common Pleas.

— term, in the — year of the reign of Queen Victoria.

B. } Upon reading a rule made in this cause on —, the — day of
v. } —, in this present — term, the allocatur of master — made
D. } thereon, and the affidavits of P. A. and A. B., it is ordered that an attachment for contempt be issued forth against the [defendant] above named, for non-payment of the sum of £— pursuant to the said rule, and of the allocatur so made thereon as aforesaid.

By the Court.

15. *Attachment for Non-payment of Costs, in Q. B. or C. P.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of — greeting: Attach C. D. so that you may have his body before us [or in C. P. "before our justices"] at Westminster, on —, to answer us of and concerning such things as on our behalf shall be then and there objected against him: and have there then this writ. Witness — (name of chief justice), at Westminster, the — day of —, in the year of our Lord —.

Indorsement thereon.

A. B. against *C. D.* for non-payment £—— costs, taxed by master ——, pursuant to a rule of court, dated the —— day of ——, 1840.

16. *Letter of Attorney, to demand Costs, in the Exchequer.*

Know all men by these presents, that I, *A. B.*, of ——, for divers good causes and considerations me hereunto moving, have made, ordained, authorized, constituted, and appointed, and by these presents do make, ordain, authorize, constitute and appoint *P. A.* of ——, gentleman, my true and lawful attorney for me and in my name and to my use, to ask, demand, and receive, of and from *C. D.* of —— the sum of £——, being costs allowed to me by virtue of and under an order of her majesty's court of Exchequer at Westminster, bearing date the —— day of —— last past, and allocatur of the proper officer taxing the same thereon made and given: And on payment thereof acquittances, or other sufficient discharges for the same, for me and in my name to make, seal and deliver, and to do all other lawful acts and things whatsoever concerning the premises, as fully in every respect as I myself might or could do if I were personally present; hereby ratifying, confirming, and allowing all and whatsoever my said attorney shall in my name lawfully do in and about the said premises, by virtue of these presents. In witness whereof I have hereunto set my hand and seal this —— day of ——, in the year of our Lord 1840.

Sealed and delivered in the presence of *W. W.*

A. B.

17. *Affidavit of Demand of Costs thereon, Refusal of Payment, and Execution of Letter of Attorney.*

In the Exchequer of Pleas.

A. B. plaintiff and *C. D.* defendant.

P. A. of ——, and *W. W.* of ——, severally make oath and say; and first the said *P. A.* for himself saith, that he this deponent, on the —— day of —— instant [*or* “last”] personally served *C. D.*, the above named defendant, with a true copy of the rule and master's allocatur thereon given for costs taxed on the said rule, and letter of attorney hereunto annexed, and at the same time showed him the said original rule and allocatur, and demanded of him the costs allowed by the master on the said rule, and also showed to him the said letter of attorney from the said defendant, authorizing this deponent to receive the same; but the said defendant then refused [*or* “declined”] to pay the same, and the same yet remains unpaid. And the said *W. W.* for himself saith, that on —— he was present and did see the said defendant *A. B.* duly execute the letter of attorney above-mentioned to be hereunto annexed: and that the name *A. B.* appearing to be party executing the same, and the name *W. W.* subscribed as a witness to the due execution of the said letter of attorney, are respectively of the proper hand-writing of the said *A. B.* and this deponent.

Sworn [&c. *ante*, 207.]

P. A.

W. W.

18. *Attachment for Non-payment of Costs, in Exchequer.*

Victoria, [&c. *as ante*, 632, No. 15,] to the sheriff of ——, greeting: We command you that you omit not by reason of any liberty of your county,

but that you enter the same and attach *C. D.* by his body, wheresoever he shall be found in your bailiwick, and him safely and securely keep, so that you may have him before the barons of our Exchequer at Westminster on — next coming, to answer us of divers trespasses, contempts, and offences by him lately done and committed: and further to do and receive what our said barons shall then and there think fit to order concerning him in this behalf; and have there this writ. Witness — (*name of chief baron*), at Westminster, the — day of —, in the year of our Lord —.

P. A. solicitor.

By order of the court, at instance of *A. B.* for non-payment of £— costs.

19. Execution for Costs.

[See the various forms of execution for costs on judgments and rules of inferior courts, ante, 569 to 575; and for costs of rules of superior courts post, 650 to 653; and for costs on consent rule, ante, 387 to 390.]

CHAPTER XXXII.

ENTRY OF SUGGESTIONS UPON THE ROLL.

SECT. I.—*As to the awarding of the Venire, 635 to 637.*

II.—*Of Breaches in Debt on Bond, &c. see ante, 637.*

III.—*Of the Death, &c. of Parties, 638 to 640.*

IV.—*Of the Change, &c. of Parties, 640.*

V.—*For Costs, 641 to 645.*

VI.—*For having Execution against a Party not named in the Judgment, 646.*

SECT. I.—SUGGESTIONS AS TO THE AWARDING OF THE VENIRE.

1. *Suggestion that one of the Sheriffs is interested in the Suit, and award of Venire to the other.*

[*Proceed to the end of the similiter and issue, and before the award of the venire make this entry:*] And hereupon the said [defendant] says, that S. S. esq. and L. L. esq. are sheriffs of [London]; and that the said S. S. one of the said sheriffs, is [*state how S. S. is interested in the event of the action*]; and this the said [defendant] is ready to verify. Wherefore the said [defendant] prays a writ to be directed to L. L. esq. the other sheriff of [London] aforesaid, commanding him that he cause to come twelve &c. to try the said issue [*or "several issues"*] between the said parties; and because the said [plaintiff] does not deny the aforesaid allegation of the said [defendant], but acknowledges the same, it is granted to him &c. Therefore the said sheriff L. L. esq. is commanded [*&c. conclude with the award of the venire as usual.*]

[*See 2 Chit. Ar. Pr. 1170.*]

2. *Suggestion that the Sheriff is a Party, and award of Venire to Coroner.*

[*Proceed to the end of the similiter and issue, and before the award of venire make this entry:*] And because it is suggested to the court here that the plaintiff is sheriff of — aforesaid, it is therefore commanded to the coroner of the said county of —, that he cause to come [*&c. conclude with the award of venire as usual.*]

3. *Suggestion that the Sheriff is of kin to Defendant, and award of Venire to Coroner.*

[*Proceed to the end of the similiter and issue, and before the award of the venire make this entry:*] And hereupon the plaintiff says that S. S.,

now sheriff of the said county of —, is of kin, that is to say, brother to the defendant, and for this cause the plaintiff prays a writ of our lady the queen of venire facias to be directed to the coroner of the said county of —. And because the defendant doth not deny the aforesaid allegation of the plaintiff, it is granted to him &c. Therefore it is commanded to the coroner of the said county of —, that he cause to come [&c. conclude by stating the award of the venire as usual.]

4. *Suggestion that Sheriffs and Coroner are interested, and Award of Venire to Elisors (a).*

[Proceed to the end of the similiter and issue, and before the award of venire make this entry:] And hereupon the plaintiff says that S. S. and J. S., now sheriffs of the city of — and county of the same city, are [here state how the sheriffs are interested in the event of the action] bailiffs of the city of — aforesaid, and therefore parties to the matter aforesaid above put in issue between the plaintiff and the defendant; and that —, now coroner of the said city of — and county of the same city, is one of the same commonalty of the city of — aforesaid, and therefore likewise a party to the said matter above put in issue between the plaintiff and the defendant as aforesaid; and the plaintiff prays a writ of our lady the queen to be directed to two discreet and indifferent persons, residing within the said county of the city of — aforesaid by the court here to be elected, to cause to come twelve free and lawful men of the neighbourhood of —, in the said county of the city of — aforesaid, to try the issue aforesaid above joined between the parties aforesaid: And because the defendant doth not deny the allegation aforesaid, therefore it is commanded to — and —, with the assent of the parties aforesaid, by the court here elected and named, that they cause to come [&c. conclude stating the award of venire as usual.]

5. *Rule of Court in a local Action for the Trial or Inquiry to take place in another County, under 3 & 4 Will. 4, c. 42, s. 22.*

— the — day of —, A. D. —.

As yet of — term, — Victoria.

B. } [Commence the rule as usual; see the forms, post, 649, and
v. } then thus:] it is ordered that the issue [or “issues”] joined in this
D. } action shall be tried [or “writ of inquiry to be executed in this
action shall be executed”] in the county of M. and not in the county of
S., the county in which the venue in this action is laid; and for that purpose it is further ordered that a suggestion shall be entered on the record that the said trial may be more conveniently had [or “that the said writ of inquiry may be more conveniently executed”] in the said county of M. according to the stat. 3 & 4 Will. 4, c. 42, s. 22, [conclude as usual, see the forms, post, 649.]

[See 2 Chit. Ar. Pr. 1170.]

6. *Judge's Order for a like purpose.*

[A form may be readily framed from the preceding one and the usual form, post, 654.]

(a) See a like form, Tidd's Forms, 249; see 2 Chit. Ar. Pr. 1170.

7. *Suggestion in a local Action for the Trial to take place in another County, under 3 & 4 Will. 4, c. 42, s. 22.*

[*Proceed to the end of the similitur and issue, and before the award of venire make the following entry:*] But because it is suggested and proved and manifestly appears to the court here, that the trial of the said issue above joined between the parties aforesaid, may be more conveniently had in the county of —, therefore, according to the form of the statute in such case made and provided, the sheriff of the said county of — is commanded [*&c. conclude stating the award of the venire as usual.*]

8. *Suggestion for Trial in adjoining County to obtain an impartial Trial (a).*

[*Proceed to the end of the similitur and issue, and before the award of venire make the following entry:*] But because it is suggested and proved and manifestly appears to the court here, that the said issue above joined between the parties aforesaid cannot be fairly and impartially tried by a jury of the said town and county of the town of —; therefore let a jury of the county of —, being the county next adjoining to the said town and county of —, thereupon come [*&c. conclude stating the award of venire as usual.*]

[*See 2 Chit. Ar. Pr. 1170.*]

9. *The like, on 38 Geo. 3, c. 52, s. 1, when Venue laid in a City or Town Corporate.*

[*Proceed to the end of the similitur and issue, and before the award of venire make the following entry:*] And hereupon the defendant prays the court here that the issue above joined between the said parties may be tried in the county of —, being the county next adjoining to the city [or “town and county of the town”] of — aforesaid, and not within the same city [or “town and county”]: and that proper writs of venire and distringas may be awarded in that behalf, according to the form of the statute in such case made and provided; and it is granted to him &c. Therefore for the trial of the said issue above joined between the parties aforesaid, the sheriff of the said county of — is commanded that he cause to come on —, twelve &c. here, by whom &c., and who neither &c., to recognise &c., because as well &c.

[*See 2 Chit. Ar. Pr. 1171.*]

SECTION II.

SUGGESTIONS OF BREACHES IN DEBT ON BOND.

[*See the forms, ante, 345, 347.*]

(a) See form of suggestion and award of venire, where the venue is laid in Berwick-upon-Tweed, *ante*, 48.

SECTION. III.

SUGGESTIONS AS TO THE DEATH OF PARTIES.

1. *Suggestion of Death of one of several Plaintiffs, after issuing Writ, and before Declaration.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. 1840.

— (to wit). A. B. by P. A. his attorney [or "in his own proper person"] complains of C. D. who has been summoned (*as the case is*) to answer the said A. B. and one E. F. in an action on promises (*or as the plea is*), and the said E. F. comes not; and the said A. B. gives the court here to understand and be informed, that after the suing out of the writ in this cause, and before this day, to wit, on —, the said E. F. died, and the said A. B. then survived him; which the said C. D. doth not deny, but admits the same to be true, and thereupon the said A. B., by his attorney aforesaid, complains of the said C. D. as aforesaid: For that whereas [&c. state the cause of action to have accrued to the surviving plaintiff and the deceased.]

[See 2 Chit. Ar. Pr. 1171.]

2. *The like, of Death of one of Plaintiffs, between Declaration and Plea.*

[After the declaration proceed on a new line thus:] And on —, the defendant, by D. A. his attorney, comes, and the said E. F. (*the deceased plaintiff*) comes not: And hereupon the said A. B. gives the court here to understand and be informed, that after the plaintiff declared as aforesaid, and before this day, to wit, on —, the said E. F. died, and the said A. B. then survived him; which allegation the defendant doth not deny, but admits the same to be true; Therefore let no further proceedings be had in this cause at the suit of the said E. F. And the defendant by his attorney aforesaid says [&c. proceed with the plea, and let the proceedings go on as at the suit of the surviving plaintiff only.]

3. *The like, of Death of one of Defendants, between Declaration and Plea.*

[After the declaration proceed on a new line as follows:] And on —, the said C. D. by D. A. his attorney, comes, and the said E. F. comes not: And hereupon the said C. D. gives the court here to understand and be informed, that after the plaintiff so declared as aforesaid, and before this day, to wit, on —, the said E. F. died, and the said C. D. then survived him; which allegation the plaintiff does not deny, but admits the same to be true: Therefore let all further proceedings in this cause against the said E. F. be stayed. And the said C. D. by his attorney aforesaid says [&c. proceed with the plea of the surviving defendant, and let the proceedings go on as against him only.]

4. *The like, of Death of one of Plaintiffs, between Plea and Replication.*

[After the defendant's plea, proceed thus:] And afterwards, to wit, on —, comes here as well the said A. B. by his attorney aforesaid, as the

defendant by his attorney aforesaid ; and the said *E. F.* cometh not : And hereupon the said *A. B.* gives the court here to understand and be informed, that after the pleading of the plea aforesaid, and before this day, to wit, on —, the said *E. F.* died, and the said *A. B.* then survived him ; which allegation the defendant doth not deny, but admits the same to be true : Therefore let no further proceedings be had in this cause at the suit of the said *E. F.* And as to the said plea of the defendant [*&c. proceed with the replication, and let the proceedings go on as at the suit of the surviving plaintiff only.*]

5. *Suggestion of Death of one of several Plaintiffs or Defendants, after Issue joined, and before Trial.*

[*Proceed as usual as in an issue, to the end of the award of venire facias, and then thus:*] Before which day, to wit, on —, the said *E. F.* died, and the said *A. B.* [*or “ C. D.”*] then survived him.

6. *Suggestion of Death of one of Defendants, after Verdict for Plaintiff, and before Judgment.*

[*Proceed to the end of the Postea, and then thus:*] And upon this the plaintiff gives the court here to understand and be informed, that after the finding of the verdict aforesaid, and before this day, to wit, on —, the said *E. F.* died, and the said *C. D.* then survived him ; which the said *C. D.* doth not deny, but admits the same to be true ; therefore let all further proceedings in this cause against the said *E. F.* be stayed : Whereupon the plaintiff prays judgment against the said *C. D.* of and upon the premises : Therefore it is considered [*&c. state the judgment as usual.*]

[*See 2 Chit. Ar. Pr. 1171, 1181.*]

7. *The like, on a Verdict for Defendant at Assizes, where deceased Defendant died after Verdict, and before Judgment.*

[*Proceed as usual in an entry of judgment for defendant, as in form, ante, 102, No. 1, to the words “ none of them did appear,” then thus:*] At which day come here as well the plaintiff by his attorney aforesaid, as the said *C. D.* by his attorney aforesaid ; and the said *E. F.* comes not : And the said [justices of assize] before whom the said issue was tried, have sent hither their record had before them in these words, to wit : Afterwards [*&c. here copy the postea.*] And upon this the said *C. D.* gives the court here to understand and be informed, that after the finding of the said verdict, and before this day, to wit, on —, the said *E. F.* died, and the said *C. D.* then survived him ; which the said *A. B.* does not deny, but admits the same to be true ; wherefore the said *C. D.* prays judgment of and upon the premises : Therefore it is considered that the plaintiff take nothing by his writ, but that he be in mercy &c. ; and that all further proceedings as to the said *E. F.* be stayed, and the said *C. D.* do go thereof without day &c. And it is further considered [*&c. conclude as usual as in a judgment for defendant, see ante, 108, No. 23.*]

8. *Suggestion of Death of one of the Plaintiffs, after interlocutory Judgment by Default, and before final Judgment.*

[*Proceed as usual, see the form, ante, 328, No. 1, to the end of the award of the inquiry, and then thus :*] At which day comes here the said *A. B.* by his attorney aforesaid; and the sheriff [*&c. proceed as usual, as in the form, ante, 328, No. 1, to the end of the inquisition ;*] and the said *E. F.* at the same day, being solemnly demanded, comes not : And hereupon the said *A. B.* gives the court here to understand and be informed, that since the taking of the said inquisition, and before this day, to wit, on —, the said *E. F.* died, and the said *A. B.* then survived him ; and because this is not denied, therefore let no further proceedings be had at the suit of the said *E. F.* ; and upon this the said *A. B.* prays judgment against the defendant for the damages, costs, and charges aforesaid : Therefore it is considered [*&c. conclude as usual, as ante, 102, &c.*]

[*See 2 Chit. Ar. Pr. 1171, 1181.*]

SECTION IV.

SUGGESTION OF CHANGE &C. OF PARTIES.

1. *Suggestion in Action against a Banking Company under the 7 Geo. 4, c. 46, of the Resignation of the Public Officer before Declaration, and of the Action being continued against another.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

On the — day of — A. D. —.

— (to wit). *A. B.*, by — his attorney, complains of *C. D.*, one of the public officers for the time being, of certain persons united in co-partnership by the name and description of the " — bank, —," for the purposes of carrying on the trade and business of bankers in England, under and by virtue and according to the form and effect of a certain act of parliament made and passed in the seventh year of the reign of his late majesty King George IV., for the better regulating co-partnerships of certain bankers in England, and duly nominated, appointed, and constituted one of the public officers of the said bank, and registered as such, pursuant and according to the form and effect of the said act of parliament, in an action on promises : And the said *A. B.* suggests and gives the court here to understand and be informed, that the action was commenced by writ of summons in an action on promises, issued out of the court of our lady the queen before the queen herself, [*or "before her majesty's justices of the Bench," or "before her majesty's barons of the Exchequer,"*] on the — day of —, A. D. —, at the suit of the said *A. B.* against *E. F.* then being and as one of the public officers of the said co-partnership, and duly nominated and constituted such officer to sue and be sued on behalf of the said co-partnership, and registered as such pursuant and according to the said statute. And the said *A. B.* further suggests and gives the court here to understand and be informed, that since the issuing of the said writ and before this day, to wit, on the — day of —, A. D. —, the said *E. F.* resigned (*according to the fact*) the said office and appointment, and then ceased being any longer such officer as aforesaid. And the said *A. B.* thereupon and according to the said statute continues, prosecutes, and carries on this action against the said *C. D.*, so being such public officer as aforesaid. For that &c.

2. Suggestion that Plaintiff was Knighted or made a Baronet after Declaration and before Plea.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. —.

— (to wit). Sir *A. B.*, knight, [or "baronet,"] by *P. A.* his attorney, complains of *C. D.* who has been summoned to answer the said sir *A. B.* knight, [or "baronet,"] suing by the name of *A. B.* in an action on promises, and which said *A. B.*, after the said *C. D.* was so summoned to answer him as aforesaid, and before this day, to wit, on the — day of — A. D. —, was duly created and made a knight [or "baronet"], and from thence hitherto hath been and still is called and known by the title or name of dignity of sir *A. B.* knight [or "baronet"]. For that whereas &c.

3. The like, as to the Defendant.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On the — day of —, A. D. —.

— (to wit). *A. B.* by *P. A.* his attorney complains of sir *C. D.* knight [or "baronet"], who has been summoned by the name of *C. D.* to answer the said *A. B.* in an action on promises, and which said *C. D.* after he was so summoned, and before this day, to wit, on the — day of —, A. D. —, was duly created and made a knight [or "baronet"], and from thence hitherto hath been and still is called and known by the title or name of dignity of sir *C. D.* knight [or "baronet"]. For that whereas &c.

SECTION V.

SUGGESTIONS FOR COSTS.

1. Affidavit to obtain Rule to enter a Suggestion for Costs on a Court of Request Act.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

C. D. of — [tailor], the above-named defendant, maketh oath and saith, that the above-named plaintiff did on the trial of this cause obtain a verdict for the sum of £—, and no more; and this deponent further saith, that this deponent and the above-named plaintiff, before and at the time of the commencement of this suit, were and ever since have been and still are respectively inhabiting and resident in —, [the place within the jurisdiction of the court mentioned in the act,] and that this deponent for and during all that time hath been and still is liable to be summoned to the Court of Requests, held at —, [the affidavit must be adapted to meet the terms of the act, in some cases it will be necessary to state that the cause of action arose within the jurisdiction of the court.]

Sworn [&c. ante, 207.]

C. D.

[See 2 Chit. Ar. Pr. 1173 to 1177.]

2. *Rule Nisi for entering Suggestion, in Q. B. or Exch. on a Court of Request Act.*

In the Q. B. [*or* "Exch. of Pleas."]

On — the — day of —, in the year of our Lord —.
 B. } On reading the affidavit of C. D. the defendant, it is ordered.
 v. } that the plaintiff, upon notice of this rule to be given to his at-
 D. } torney or agent, shall upon — show cause why the said defend-
 ant should not be at liberty to enter a suggestion on the roll, that at the
 commencement of this action, and long before, he kept a house in —
 within the city of —, and was liable to be warned or summoned to
 appear before the commissioners of the Court of Requests for the said
 city; and that this action was commenced in this court for a debt not ex-
 ceeding £5, and which was recoverable in the said Court of Requests (a).
 and also why the taxation of any costs to the plaintiff should not be
 stayed; and in the meantime let such taxation be stayed. Upon the mo-
 tion of Mr. —.

By the Court.

[*See 2 Chit. Ar. Pr. 1177.*]

3. *Rule absolute thereon.*

In the Q. B. [*or* "Exch. of Pleas."]

On — the — day of —, A. D. —.
 As yet of — term, in the — year of the reign of Queen Victoria
 A. B. v. C. D.
 — the — } Upon reading the rule of the — day of — in-
 day of —. } stant, and the affidavit of G. G., and hearing Mr.
 P. — of counsel for the defendant, and Mr. T. — of counsel for the
 plaintiff: It is ordered, that the defendant be at liberty to enter a sugges-
 tion on the roll, pursuant to the statute — Geo. 3, c. —, intituled,
 "An Act," [*&c. set forth the title.*]

By the Court.

4. *Rule absolute in C. P.*

In the Common Pleas.

On — the — day of —, A. D. —.
 As yet of — term, in the — year of the reign of Queen Victoria.
 B. } Upon reading a rule made in this cause, on — the — day
 v. } of this present term, the affidavit of A. B., and on hearing counsel
 D. } on both sides: It is ordered, that the defendant be at liberty to
 enter a suggestion on the record, setting forth among other things that at
 the time of the commencement of this action, he the said defendant
 sought his livelihood in the city of —, and was subject to the jurisdic-
 tion of the Court of Requests for the said city; and that the plaintiff's
 several causes of action arose within the jurisdiction of the Court of Re-
 quests holden at — (a); and that the debt recovered in the said action
 did not amount to £5; and it is further ordered, that the said plaintiff do
 and shall lose his costs of this suit, pursuant to the statute of the —
 year of the reign of King George the Third in that case made and pro-
 vided.

By the Court.

(a) All this should agree with the provisions of the statute.

5. Suggestion under a Court of Request Act.

Therefore it is considered that the plaintiff do recover against the defendant the sum of £3 : 17s. for his damages aforesaid by the jurors aforesaid in the form aforesaid assessed: And because it is suggested and proved, and manifestly appears to the court here, that the defendant, before and at the time of commencing this action, was residing within the city of —, and keeping a house and shop within the said city and the liberties thereof aforesaid (a); therefore, according to the form of the statute in such case made and provided, let the defendant be acquitted of the said sum of forty shillings for the costs and charges aforesaid, and any further or other costs and charges which the plaintiff may have expended about his suit in this behalf, and go thereof without day &c.

6. Suggestion on Verdict for Plaintiff, for Double Costs for Defendant, on the Court of Conscience Act for Middlesex.

Therefore it is considered that the said plaintiff do recover against the defendant his damages aforesaid, by the jurors aforesaid in form aforesaid assessed; and because it is suggested and proved, and manifestly appears to the court here, that the defendant, before and at the time of bringing this action, did live and reside in the said county of Middlesex, and was liable to be summoned to the county court of Middlesex aforesaid; it is further considered by the said court here, that the defendant do recover against the plaintiff the sum of £—— for his double costs of suit in this behalf, by the said court here adjudged to the defendant and with his assent, according to the form of the statute in such case made and provided; and that the defendant have execution thereof &c.

[See 2 Chit. Ar. Pr. 1174, n. (r).]

7. Suggestion under the Court of Request Act for Hales Owen, &c. (47 Geo. 3, c. xxxvi.) to deprive Plaintiff of his Costs.

Therefore it is considered that the plaintiff do recover against the defendant the said sum of £—— (*amount of verdict*) for his damages aforesaid, by the jurors aforesaid in form aforesaid assessed; and because it is suggested and proved, and manifestly appears to the court here, that the defendant, before and at the time of commencing this action, was inhabiting and residing (a), and was within the limits of the parish of Hales Owen, in the county of —, and was liable to be summoned in the Court of Requests for the parishes of Hales Owen, Rowley, Regis Tepton, West Bromwich, Harborne, and the manor of Bradley in the parish of Wolverhampton, in the several counties of Worcester, Salop, and Stafford; and therefore according to the form of the statute in such case made and provided, let the defendant be acquitted of the said sum of forty shillings, for his costs and charges aforesaid, and any further or other costs and charges which the plaintiff may have expended about his suit in this behalf, and go thereof without day &c.

(a) This statement must depend on the words used in the act. See *Moreau v. Hicks*, 1 Harr. & W. 87.

8. *Rule for a Suggestion on 43 Geo. 3, c. 46, s. 3, to entitle Defendant to Costs where Plaintiff recovers less than the sum for which Defendant was held to bail.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On — the — day of —, A. D. —.

As yet of — term, in the — year of the reign of Queen Victoria.

A. B. v. C. D.

— the — } Upon reading the rule made in this cause of the
day of —. } — day of — instant, the affidavit of G. F., the
affidavit of C. B., and the affidavit of W. G., and hearing Mr. P. of
counsel for the plaintiff, and Mr. T. of counsel for the defendant: It is
ordered that the defendant be entitled to his costs of this action, and also
the costs of and occasioned by this application, to be taxed according to
the custom of this court, and that the plaintiff be disabled from taking out
execution for the sum recovered in this action, unless the same shall ex-
ceed, and then in such sum only as the same shall exceed, the amount of
the taxed costs of the said defendant; and in case the sum recovered in
this action shall be less than the amount of the costs of the defendant to
be taxed as aforesaid, that the defendant be entitled, after deducting the
sum of money recovered by the plaintiff from the amount of his costs so
to be taxed as aforesaid, to take out execution for such costs in like man-
ner as a defendant may by law have execution for his costs in other cases,
the plaintiff not having recovered the amount for which the defendant
was arrested, pursuant to the statute 43 Geo. 3, c. 46.

By the Court.

Rose.

9. *Suggestion thereon.*

Therefore it is considered that the plaintiff do recover against the de-
fendant his debt and damages aforesaid in form aforesaid assessed; and
upon this the defendant gives the court here to understand and be informed
that this action was brought against the defendant by the plaintiff after
the first day of June, in the year of our Lord —; and that the defendant
was arrested and held to special bail therein, to the amount of the sum
of £—, which the plaintiff doth not deny, but admits the same to be
true: And because it has been also suggested and made appear to the
satisfaction of the court here, upon motion made in court for that pur-
pose, and upon hearing the said parties by affidavit, according to the form
of the statute in such case made and provided, that the plaintiff had not
any reasonable or probable cause for causing the defendant to be arrested
and held to special bail in such amount as aforesaid; therefore, by a rule
or order of the same court here in that behalf made, according to the
form of the statute aforesaid, it is ordered and directed that the defendant
be allowed his costs of this action, to be taxed by one of the masters, and
which costs were afterwards duly taxed by him at the sum of £—. And thereupon it is further considered by the said court here, that the
defendant, after deducting the said sum of £—, so recovered by the
plaintiff in this action as aforesaid, from the amount of his the defendant's
said costs so taxed as aforesaid, have his execution against the plaintiff for
the residue of such costs, according to the form of the statute aforesaid
&c. [When the sum recovered is more than the amount of the defendant's
costs, there is no occasion for the latter part of this entry. See Tidd's
Forms, 345.]

[See 2 Chit. Ar. Pr. 1148 to 1152.]

10. *Capias ad Satisfaciendum in Exch. thereon (a).*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of Middlesex, greeting: We command you that you omit not by reason of any liberty in your county, but that you enter the same and take *A. B.* wheresoever he shall be found in your bailiwick, and him safely keep, so that you may have his body before the barons of our Exchequer at Westminster, immediately after the execution hereof, to satisfy *C. D.* £——, parcel of the sum of £——, which lately in our court before the barons of our Exchequer at Westminster were adjudged to the said *C. D.*, according to the form of the statute in such case made and provided, for his costs by him laid out in and about his defence in a certain action of debt lately prosecuted in our said court by the said *A. B.* against the said *C. D.*, and in which said action he the said *C. D.* was arrested and held to special bail at the suit of the said *A. B.*, to the amount of the sum of £——, after deducting the sum of £——, recovered by the said *A. B.* in the said action for his debt and damages, from the amount of the said sum of £——, for that the said *A. B.* had not any reasonable or probable cause for causing the said *C. D.* to be arrested and held to special bail in such amount as aforesaid, whereof the said *A. B.* is convicted, as by inspecting the rolls of our said Exchequer appears to us, together with interest on the said sum of £—— at the rate of £4 per centum per annum, from the —— day of ——, A.D. ——, and have you there this writ. Witness —— (*name of chief baron*), at Westminster, the —— day of ——, in the year of our Lord ——.

11. *Suggestion, after Verdict for one of several Defendants in Trespass, of his being a Constable, in order to entitle him to double Costs.*

Therefore it is considered by the court here, that the plaintiff take nothing by his said writ against the said *C. D.*, but that he be in mercy &c.; and that the said *C. D.* do go thereof without day, &c. And because it is suggested and proved, and manifestly appears to the court here, by the certificate of the said chief justice [*or "chief baron"*] before whom the said issue was tried, that the said *C. D.* acted as a constable in the execution of his duty, in committing the supposed trespasses for which this action was brought against him; therefore, according to the form of the statute in such case made and provided, it is further considered by the said court here, that the said *C. D.* do recover against the plaintiff £—— for his double costs of suit in this behalf by the said court here adjudged to the said *C. D.* and with his assent, and that the said *C. D.* have execution thereof &c. It is also considered by the said court here, that the plaintiff do recover against the said *E. F.* and *G. H.* his said damages, costs, and charges by the jurors in form aforesaid assessed, and also £—— for his said costs and charges by the court here adjudged of increase to the plaintiff and with his assent, which said damages, costs, and charges, in the whole amount to £——, and the said *C. D.* and *G. H.* in mercy &c.

[*See 2 Chit. Ar. Pr. 913, 914, 1173.*]

(a) See a form of fi. fa. thereon, *ante*, 202.

SECTION V.

SUGGESTIONS, &c. FOR HAVING EXECUTION AGAINST A PARTY NOT NAMED IN THE JUDGMENT.

1. *Suggestion to have Execution against a Member of a Joint-Stock Company, on a Judgment against the Public Officer (a).*

[*After the judgment proceed thus:*] And hereupon, on the — day of — (date of *fi. fa.*), the plaintiff suggests and gives the court here to understand and be informed, that before and at the time of the giving of the said judgment one J. K. was and from thence hitherto hath been and still is one of the members of the said society or copartnership during all the time aforesaid, carrying on business under the provisions of the said statute, which the said J. K. doth not deny, but admits to be true, and hereupon the plaintiff prays that execution may be awarded to him on the said judgment against the said J. K., and it is granted to him accordingly, returnable, &c.

2. *Fieri Facias thereon.*

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you, that you cause to be made of the goods and chattels in your bailiwick of J. K. the sum of £—, which in our court before us [*or in C. P. "before our justices of the bench," or in Exch. "before the barons of our Exchequer"*] at Westminster were awarded to H. B. for his damages which he sustained, as well on occasion of not performing certain promises before then made to him by certain persons united in a society or copartnership called the —, carrying on the business of —, according to the form and effect of a certain statute made and passed in the — year of —, and intituled [*&c. here set out the title of the act*], as for his costs and charges by them about their suit in that behalf expended, whereof C. D., one of the public officers of and for the said society or copartnership, and sued as such by the said H. B. in that behalf, according to the said statute, was convicted, as appears to us of record [*or in C. P. omit "as appears to us of record," or in Exch. say "as by inspecting the rolls of our said Exchequer appears to us"*]; together with interest upon the said sum of £—, at the rate of £4 per centum per annum, from the — day of —, A.D. —, on which day the aforesaid judgment was entered up [*or if entered up before the 1st October, 1838, say "from the 1st day of October, A.D. 1838," and omit the words "on which day the judgment aforesaid was entered up"*]; whereupon, on behalf of the said H. B. it has been suggested and given to the court here to understand and be informed, that before and at the time of the giving of the said judgment the said J. K. was and from thence hitherto has been, and still is one of the members of the said society or copartnership during all the time aforesaid, carrying on business under the provisions of the said statute, as also appears to us of record [*or in C. P. or Exch. vide supra*]: And have you that money, together with such interest as aforesaid, before us [*or in C. P. "before our justices of the bench," or in Exch. "before the barons of our Exchequer"*] at Westminster, imme-

(a) According to the case of *Bosanquett v. Rainsforth*, Q. B., 17 Jan. 1840, a scire facias would be necessary in case of a proceeding against the member of a banking company under

the provisions of 7 Geo. 4, c. 46; but in cases where the act of parliament under which the company is formed makes a suggestion sufficient, the above form may still be found useful.

diately after the execution hereof, to render to the said *H. B.* for his said damages and interest: and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices," or in Exch. "to the said barons"*] at Westminster, immediately after the execution thereof, and have you there then this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

CHAPTER XXXIII.

DEATH, BANKRUPTCY, MARRIAGE, &c. OF PARTIES.

[See 2 *Chit. Ar. Pr.* 1178, et seq. and the forms referred to in the Index, under the titles "*Bankruptcy*," "*Death*," "*Husband and Wife*."]

CHAPTER XXXIV.

MOTIONS AND RULES.

1. *Notice of Motion.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

Take notice that this honourable court will be moved to-morrow, [*or "on the — instant,"*] or as soon after as counsel can be heard, for a rule to show cause why [*&c. here state the subject matter of the intended motion. See the various forms throughout this work.*] Dated this — day of —, A.D. 1840.

To Mr *D.A.* defendant's
[*or "plaintiff's"*] attorney
[*or "agent."*]

Your's &c. *P.A.* plaintiff's
[*or "defendant's"*] attorney
[*or "agent."*]

[*See 2 Chit. Ar. Pr. 1045, 1186.*]

2. *Affidavit of Service of Notice of Motion.*

In the Q. B. [*or "C. P." or Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant.

P. A. of —, gentleman, attorney for the above-named defendant, maketh oath and saith that he this deponent did on the — day of — instant [*or "last"*] personally serve Mr. *E. F.* who acts as attorney [*or "agent"*] for the above-named plaintiff, with a true copy of the notice hereunto annexed, apprising him that this honourable court would be moved [*&c. as in notice, or if not personally served on plaintiff, say "did on, &c. serve a true copy (&c. as above) on Mr. E. F. who acts as attorney (or 'agent') for the plaintiff in this cause, by leaving the same at the house (or 'chambers') of the said E. F. with his clerk (or 'servant') there."*]

Sworn [*&c. as ante, 207.*]

P.A.

3. *Affidavit in support of or against Motion.*

[*See the forms of titles and conclusions, &c. of affidavits, ante, 207, post, 665; also the forms referred to in the Index, title "Affidavit." See 2 Chit. Ar. Pr. 1185.*]

4. *Rule Nisi in Q. B.*

— the — day of —, in the — year of the reign of Queen Victoria (a).

A. B. } Upon reading the affidavit of W. W. and others, and the
against } declaration in this cause, (or as the case is,) it is ordered that
C. D. } the plaintiff, upon notice of this rule to be given to him or his
attorney, shall, upon — in this term, show cause why [&c. state the
subject-matter of the rule.] Upon the motion of Mr. —.

By the Court.

[See 2 Chit. Ar. Pr. 1184.]

5. *The like, in C. P.*

— term, in the — year of the reign of Queen Victoria (a).

A. B. } Upon reading the declaration in this cause, and the affidavit
against } of W. W. and others, it is ordered that the [plaintiff,] upon
C. D. } notice of this rule to be given to him or his attorney, shall show
cause to this court, on —, why [&c. stating the subject-matter of the
rule.] On the motion of Mr. — for the [defendant.]

By the Court.

6. *The like, in Exchequer.*

In the Exchequer of Pleas.

A. B. v. C. D.

— term, — Victoria (a).

On the motion of Mr. — of counsel for the [defendant], and reading the affidavit of the [defendant], and the affidavit of W. W., and reading the declaration in this cause, (or as the case is,) it is ordered that the [plaintiff] show cause, on —, why [&c. state the subject-matter of the rule.]

By the Court.

7. *Affidavit of Service of Rule Nisi.*

[See the forms, ante, 337, 587. See 2 Chit. Ar. Pr. 1188.]

8. *Rule absolute.*

— the — day of —, A. D. —.

As yet of — term, in the — year of the reign of Queen Victoria (a).

A. B. } Upon reading the rule made in this cause on —, in this
against } term, the affidavit of W. W. and the affidavit of D. A. the [de-
C. D. } fendant], and upon hearing Mr. — of counsel for the de-
fendant, and Mr. — of counsel for the plaintiff, it is ordered that [&c.
state the subject-matter of the rule.]

By the Court.

[See 2 Chit. Ar. Pr. 1191.]

(a) By rule of all the courts of H. T. 1 Vict. r. 4, every rule of court delivered out in vacation shall be dated the day of the month and week

on which the same is delivered out, but shall be entitled as of the term immediately preceding such vacation.

9. *Judge's Fiat for a Rule in Vacation.*

A. B. } Upon reading the affidavit of the [defendant], and upon
 against } hearing the attornies or agents on both sides, I do order that
 C. D. } one of the masters do draw up a rule that [&c. *state the subject-matter of the intended rule.*] Dated the — day of —, 1840.
 (Judge's signature.)

[See 2 Chit. Ar. Pr. 1195.]

10. *Memorandum or Minute for Registry in pursuance of 1 & 2 Vict. c. 110, s. 19.*

[See the form, ante, 109.]

11. *Fieri Facias on a Rule or Order of a superior Court of law, for the Payment of Money.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: We command you that of the goods and chattels of C. D. in your bailiwick, you cause to be made £—, which lately in our court before us [or in C. P. "before our justices of the Bench," or in Exch. "before the barons of our Exchequer"] at Westminster, by a rule of our said court entitled, &c. [as the case may be], were by the said court ordered to be paid by the said C. D. to A. B., and that of the said goods and chattels of the said C. D. in your bailiwick, you further cause to be made interest upon the said sum of £—, at the rate of £4 per centum per annum, from the — day of —, in the year of our Lord —, on which day the said rule was made, [or if it were made prior to the 1st of October, 1838, say "from the 1st day of October, in the year of our Lord 1838," omitting the words "on which day the said rule was made,"] and have that money, together with such interest as aforesaid, before us, [or in C. P. "before our said justices," or in Exch. "before the said barons"] at Westminster, immediately after the execution hereof, to be rendered to the said A. B. for the said sum of money so ordered to be paid by the said C. D. to the said A. B., and for interest as aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us [or in C. P. "to our said justices," or in Exch. "to the said barons"] at Westminster, immediately after the execution thereof, and have there then this writ. Witness — (name of chief justice or chief baron), at Westminster, the — day of —, in the year of our Lord —.

12. *The like, for Payment of Money and Costs.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of — greeting: We command you that of the goods and chattels of C. D. in your bailiwick, you cause to be made £—, which lately in our court before us [or in C. P. "before our justices of the Bench," or in Exch. "before the barons of our Exchequer"] at Westminster, by a rule of our said court entitled &c. [as the case may be], were by the said court ordered to be paid by the said C. D. to A. B., together with the costs of the said rule,

which said costs were afterwards, on the — day of —, in the year of our Lord —, taxed and allowed by our said court at the sum of £—; and that of the said goods and chattels of the said C. D. in your bailiwick, you further cause to be made interest upon the said two several sums of £—, and £— at the rate of £4 per centum per annum, from the said — day of —, in the year of our Lord —, [*the day on which the costs of the rule were taxed, or if that were prior to the 1st of October, 1838, say* “from the 1st day of October, in the year of our Lord 1838,”] and have that money, together with such interest as aforesaid, before us [*or in C.P. “before our said justices,” or in Exch. “before the said barons”*] at Westminster, immediately after the execution hereof, to be rendered to the said A. B. for the said sum of money so ordered to be paid by the said C. D. to the said A. B., and for costs and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us [*or in C. P. “to our said justices,” or in Exch. “to the said barons”*] at Westminster immediately after the execution thereof, and have there then this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

13. *Elegit on a Rule or Order of a superior Court of Law for Payment of Money.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas lately in our court before us [*or in C. P. “before our justices of the Bench,” or in Exch. “before the barons of our Exchequer”*] at Westminster, by a rule of the said court entitled &c. [*as the case may be*] the sum of £— was by the said court ordered to be paid by C. D. to A. B., and afterwards the said A. B. came into our said court before us, [*or in C. P. “before our justices of the Bench,” or in Exch. “before the barons of our Exchequer,”*] and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of, on the — day of —, in the year of our Lord —, on which day the said rule was made, or at any time afterwards, or over which the said C. D. on the said — day of — (*the day on which the rule was made*), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £—, together with interest upon the said sum of £—, at the rate of £4 per centum per annum, from the said — day of —, in the year of our Lord —, [*the day on which the rule was made, or in case it was made prior to the 1st day of October, 1838, say* “from the 1st day of October, in the year of our Lord 1838,”] shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen

and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said — day of —, (*the day on which the rule was made,*) or at any time afterwards, or over which the said *C. D.* on the said — day of — (*the day on which the rule was made*), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit; to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £—, together with interest as aforesaid, shall have been levied; and in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices," or in Erch. "to the said barons"*] at Westminster immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness (*name of chief justice or chief baron*), at Westminster, the — day of —, in the year of our Lord —.

14. *The like, for Payment of Money and Costs.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas, lately in our court before us [*or in C. P. "before our justices of the Bench," or in Erch. "before the barons of our Exchequer"*] at Westminster, by a rule of the said court, entitled, &c. [*as the case may be*] the sum of £— was by the said court ordered to be paid by *C. D.* to *A. B.*, together with the costs of the said rule, which said costs were afterwards, on the — day of —, A. D. —, taxed and allowed by our said court at the sum of £—. And afterwards the said *A. B.* came into our said court before us, [*or in C. P. "before our justices of the Bench," or in Erch. "before the barons of our Exchequer,"*] and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of, on the said — day of —, in the year of our Lord — (*the day on which the costs of the rule were taxed*), or at any time afterwards, or over which the said *C. D.*, on the said — day of — (*the day on which the costs of the rule were taxed*), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £— and £—, together with interest upon the said two several sums of £— and £—, at the rate of £4 per centum per annum, from the said — day of — (*the day on which the costs of the rule were taxed, or in case that day were prior to the 1st of October 1838, say "from the 1st day of October, in the year of our Lord 1838,"*) shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods

and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of, on the said — day of — (*the day on which the costs of the rule were taxed*), or at any time afterwards, or over which the said *C. D.*, on the said — day of —, (*the day on which the costs of the rule were taxed*), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £— and £—, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in C. P. "to our said justices," or in Exch. "to the said barons"*] at Westminster, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness — (*name of chief justice or chief baron*), at Westminster, the — day of — in the year of our Lord —.



CHAPTER XXXV.

SUMMONS AND ORDER.

1. *Summons.*

A. B. } Let the plaintiff's [or "defendant's"] attorney or agent
 against } attend me at my chambers in Rolls' Garden, at — of the
 C. D. } clock in the forenoon [or "afternoon"] to show cause why [&c.
state the subject-matter of the summons.] Dated the — day of —,
 1840 (a). (Name of Judge or Baron.)

[See 2 Chit. Ar. Pr. 1198.]

2. *Affidavit of Attendance, &c.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

P. A. of —, gentleman, attorney for the above-named defendant [or "plaintiff"] maketh oath and saith, that he this deponent did, on the — day of — instant, serve [&c. *state the service, as ante, 337, 587*]: And this deponent further saith, that he did [on this day] duly attend the said summons, from — of the clock to — of the clock in the forenoon [or "afternoon"] at the chambers of the Right Honourable Thomas Lord Denman, the lord chief justice, [or of the "Honourable Mr. Justice —," or "Honourable Mr. Baron —,"] in Rolls' Garden, but that the plaintiff's [or "defendant's"] attorney or agent did not attend the said summons, nor did any person attend the same on his behalf, to the knowledge or belief of this deponent. And this deponent further saith, that he did [&c. *so proceed to state the second summons and attendance.*]

Sworn [&c. *ante, 207.*]

[See 2 Chit. Ar. Pr. 1201, 1202.]

3. *Order thereon.*

A. B. } Upon hearing the attornies or agents [or "counsel"] on both
 against } sides, [and by consent,] I do order that [&c. *state the subject-*
 C. D. } *matter of the order.*] Dated the — day of —, 1840.
 (Name of Judge.)

[See 2 Chit. Ar. Pr. 1201.]

(a) It is enough to state the day of the month, *Soloman v. Naisby*, 7 Dowl. 459.

4. Order to postpone Hearing of Summons.

A. B. } Upon hearing the attornies or agents on both sides, I do
 against } order that the application for [*here state concisely the subject-*
C. D. } *matter of the application,*] be postponed until — next, at
 — o'clock in the [forenoon] at my chambers in Rolls' Garden, [in
 order to afford the parties an opportunity of producing affidavits.] Dated
 the — day of —, A. D. —.

(Judge's signature.)

CHAPTER XXXVI.

AFFIDAVITS.

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff and *C. D.* defendant, [*and if several
 plaintiffs or defendants, insert the names of all, and if
 they sue or are sued as assignees, executors, or adminis-
 trators, &c. insert a description of their representative
 character, as in the forms of affidavits of debt, given ante,
 210, 211.*]

C. D. of —, tailor, the above-named defendant, [*or "plaintiff,"*]
W. W. of —, gentleman, and *D. A.* of —, gentleman, attorney for
 the above-named defendant, make oath and say; and first this deponent
C. D. for himself saith, that &c.; and this deponent further saith, that
 &c.: And this deponent *W. W.* for himself saith, that &c.: And this
 deponent *D. A.* for himself saith, that &c.: And these several deponents
C. D., *W. W.*, and *D. A.* further say, that &c.

Sworn [*&c. here state the jurat as in the form, ante, 207.*]

[*See 2 Chit. Ar. Pr. 1207.*]

[*See the different forms of affidavits throughout the work, and referred
 to in Index, title "Affidavit."*]

B O O K IV.

PART II.

PROCEEDINGS UPON AN ARBITRATION.

1. *Order of Reference at Nisi Prius, in Q. B. where a Verdict is found for Plaintiff subject to an Award.*

_____, } At the sitting of nisi prius, held at the Guildhall,
to wit. } Westminster [or "London"] on _____, the _____ day of
_____, in the year of our Lord _____, before the right honourable the lord
chief justice of our lady the queen [or "before the honourable _____,
(name of puisne judge) one of her majesty's justices"] assigned to hold
pleas before the queen herself.

A. B. } It is ordered by the court, by and with the consent of the
against } parties, their counsel and attornies, that the jury find a verdict
C. D. } for the plaintiff, damages £_____ and costs forty shillings, sub-
ject to the award, order, arbitrament, final end, and determination of
A. A. esquire, barrister at law, to whom all matters in difference [in this
cause, *see 2 Chit. Ar. Pr.* 1223,] between the parties in this cause are
hereby referred, to order and determine what he shall think fit to be done
by the said parties respecting the matters in dispute, so as the said arbi-
trator do make and publish his award in writing, of and concerning the
matters hereby referred, ready to be delivered to the said parties or either
of them [or "if they or either of them shall die, before the making of the
said award, then to their respective personal representatives;" *see 2 Chit.*
Ar. Pr. 1226,] requiring the same, on or before the _____ day of _____
next ensuing the date of this order, with liberty for the said arbitrator
from time to time, under his hand in writing at the foot hereof, or in-
dorsed hereon, to enlarge the time for making his said award. It is also
ordered, by the like consent, that the said arbitrator shall be at liberty, if
he shall think fit, to examine the parties to this suit upon oath; and for
that purpose the said parties, and also the witnesses to be examined before
the said arbitrator touching the matters referred, shall be sworn before the
said lord chief justice [or if in *Exchequer* say, "lord chief baron"] or
some other judge [or "baron"] of the same court, or before a commis-
sioner duly empowered to take affidavits, or before the said arbitrator
himself, and that the said parties shall produce before the said arbitrator
all such books, deeds, papers, and writings, in their or either of their cus-
tody or power, relating to the matters in difference, as the said arbitrator
shall think fit to require. It is likewise ordered, by and with the like
consent, that the costs of the cause shall abide the event and determina-
tion of the said award, and the costs of the reference and award be in the
discretion of the said arbitrator, who shall award by whom, to whom, and
in what manner the same shall be paid. It is likewise ordered, by the

like consent, that the said parties do and shall, on their respective parts, in all things stand to, abide by, obey, perform, fulfil, and keep the award, order, arbitrament, final end and determination of the said arbitrator, so to be made and published as aforesaid; and that neither of the said parties do or shall bring any writ of error, or prosecute any action or suit, in any court of law or equity, against the said arbitrator, or against each other respectively, for any matter relating to the arbitration, or the award to be made in pursuance of this order. It is further ordered, by the like consent, that if either of the said parties shall, by affected delay or otherwise, wilfully prevent the said arbitrator from making his award, or shall not attend after reasonable notice, and without such excuse as the said arbitrator shall be satisfied with and adjudge to be reasonable, then the said arbitrator may proceed ex parte, and the party occasioning the delay shall pay to the other such costs as the said court shall think reasonable and just. And lastly, it is ordered, that the said court of our said lady the queen may be prayed that this order be made a rule of the same court.

[See 2 Chit. Ar. Pr. 1220.]

2. *The like, in C. P.*

_____, } At the sitting of nisi prius held at the Guildhall, West-
to wit. } minster [or "London"], on _____ the _____ day of _____,
in the year of our Lord 1840, before the right honourable _____, her ma-
jesty's chief justice [or "before the honourable _____ (name of puisne judge)
one of her majesty's justices"], assigned to hold pleas in the court of our
lady the queen of the bench.

A. B. }
v. } It is ordered [&c. proceed as in the preceding form.]
C. D. }

3. *The like, in Exchequer.*

_____, } At the sittings of nisi prius, held at the Guildhall,
to wit. } Westminster [or "London"], on _____ the _____ day of _____,
in the year of our Lord 1840, before the right honourable _____, her
majesty's chief baron [or "before the honourable _____ (name of puisne
judge), one of her majesty's barons"], assigned to hold pleas in the court
of our lady the queen of her Exchequer.

A. B. }
v. } It is ordered [&c. proceed as in the form, supra, ante, 656.]
C. D. }

4. *The like, at the Assizes.*

_____, } At the assizes holden at _____, in _____, for the county
to wit. } of _____, on _____ the _____ day of _____, in the year of our
Lord 1840, before the honourable _____, one of the justices of the court of
our lady the queen, before the queen herself [or "of the Bench"], and the
honourable _____, one of the barons of our lady the queen of her court of
Exchequer, and others their fellows, justices assigned to take the assizes
in and for the said county.

A. B. }
v. } It is ordered [&c. proceed as in form, ante, 656, No. 1.]
C. D. }

5. *The like, where Juror withdrawn.*

_____, } At the sitting of *nisi prius* [&c. *as ante*, 656, No. 1.]
 to wit. }
 A. B. } It is ordered by the court, by and with the consent of the
 against } parties, their counsel and attornies, that the last jurymen sworn
 C. D. } and impanelled in this cause be withdrawn out of the panel,
 and that all matters in difference [in this cause, *see* 2 *Chit. Ar. Pr.* 1223]
 between the said parties be referred to the award, order, arbitrament, final
 end and determination of A. A. esquire, barrister at law, so as the said
 arbitrator do make and publish his award in writing [&c. *proceed as in*
the form, ante, 656.]

6. *Rule of Reference.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

On _____ the _____ day of _____, A. D. _____.

As yet of _____ term, — Victoria. (a)

A. B. } Upon hearing Mr. _____, of counsel for the plaintiff, and
 against } Mr. _____, of counsel for the defendant, and by their consent,
 C. D. } it is ordered, that all matters in difference in this cause [or
 "between the parties in this cause," *as the case may be, see* 2 *Chit. Ar. Pr.* 1223], be referred to the award, order, arbitrament, final end, and
 determination of A. A. esquire, barrister at law, so as the said A. A. shall
 make and publish his award in writing under his hand, and ready to be
 delivered to the said parties or their attornies, or such of them as shall
 desire the same [or "to their respective personal representatives, if either
 of the said parties should die before the making of the said award," *see*
 2 *Chit. Ar. Pr.* 1226], on or before the _____ day of _____ now next en-
 suing, with liberty for the said arbitrator, by indorsement under his hand
 upon this rule, or an office copy thereof, to direct that a rule of this court
 shall be applied for by counsel's hand, or a judge's order obtained at the
 instance of either party to enlarge the time for making his said award, if
 he shall see necessary; and that the said parties shall and do perform, ful-
 fil, and keep such award, so to be made as aforesaid. And by the like
 consent as aforesaid, it is further ordered, that the costs of the cause shall
 abide the event of the said award, and that the costs of the reference and
 of this rule be in the discretion of the said arbitrator, who shall direct and
 award by whom and to whom and in what manner the same shall be
 paid. And that the plaintiff and defendant respectively be examined
 upon oath, to be sworn before the lord chief justice [or if in *Exchequer*
say, "lord chief baron"], or some other of the justices [or "barons"] of
 this court, or a commissioner duly authorized, or before the said arbitra-
 tor, if thought necessary by the said arbitrator; and, by the like consent
 as aforesaid, it is also ordered, that the witnesses of the said plaintiff and
 defendant respectively be examined upon oath, to be sworn as aforesaid,
 and that the said parties, or their attornies, do produce before the said
 arbitrator all books, papers, and writings, touching and relating to the
 matters in difference between the said parties, as the said arbitrator shall
 think fit. And that neither of the said parties shall bring any action or
 suit in any court of law or in equity against the said arbitrator, for what
 he shall do in the premises, or bring or prefer any bill in equity against
 each other, of and concerning the premises so as aforesaid referred. And

(a) See *ante*, 649, n. (a).

by the like consent as aforesaid, it is lastly ordered, that if either party shall, by affected delay or otherwise, wilfully prevent the said arbitrator from making his said award, he shall pay such costs to the other as this court shall think reasonable and just.

By the Court.

[*See 2 Chit. Ar. Pr. 1220.*]

7. The like, for referring a Cause to two Arbitrators, they appointing a third.

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

On [*&c. as in preceding form.*]

A. B. } Upon hearing Mr. —, of counsel for the plaintiff, and Mr.
v. } —, of counsel for the defendant, and by their consent, it is
C. D. } ordered that all matters in difference in this cause [*or "all mat-*
ters in difference between the parties in this cause," *see 2 Chit. Ar. Pr.*
1223,] be referred to the award, order, arbitrament, final end, and deter-
mination of A. A. of —, and T. A. of —, arbitrators nominated by
the said plaintiff and defendant, and of such third person as the said A. A.
and T. A. shall, by a *memorandum* under their hands, to be indorsed on
these presents, before they proceed on the said arbitration, nominate and
appoint, or any two of them, so as they the said arbitrators, or any two
of them, shall make and publish their award in writing, of and concerning
the matters in question, on or before the — day of — next, or on or
before such further or ulterior day as the said arbitrators, or any two of
them, shall ultimately appoint and signify in writing under their hands
to be indorsed on these presents, and this court, or one of the judges
thereof, shall order: and that the said parties shall do and perform, fulfil
and keep such award so to be made by the said arbitrators, or any two of
them, so named as aforesaid: And it is further ordered, by and with such
consent as aforesaid, that the costs of this cause, and of the said reference,
or in any manner relative thereto, shall abide the event of the said award
or umpirage: And it is likewise ordered, by and with such consent as
aforesaid, that the plaintiff and defendant respectively shall or may be
examined upon oath, to be sworn before the lord chief justice or some
other justice of this court, if thought necessary by the said arbitrators, or
any two of them, and shall and do produce all books, papers, and writings
touching and relating to the matters in difference between the said par-
ties, as the said arbitrators, or any two of them, shall think fit; and the
witnesses of the plaintiff and defendant respectively shall be examined
upon oath, to be sworn before the said lord chief justice, [*or if in Exche-*
quer, "lord chief baron,"] or some other justice [*or "baron"*] of this
court, or commissioner duly authorized, or before the said arbitrators or
either of them; and it is likewise ordered, by and with such consent as
aforesaid, that neither the plaintiff nor defendant shall prosecute or bring
any action or suit, in any court of law or equity, against the said arbitra-
tors, or any or either of them, nor bring nor prefer any bill in equity
against each other, of and concerning the premises in question, so as
aforesaid referred: And it is further ordered, by and with such consent
as aforesaid, that if either party shall, by affected delay or otherwise,
wilfully prevent the said arbitrators, or any or either of them, from
making an award, he or they shall pay such costs to the other as this
court shall think reasonable and just.

By the Court.

8. *Judge's Order of Reference.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

— the — day of —, A.D. —.

As yet of — term, — Victoria.

A. B. } Upon hearing the attornies on both sides, and by their con-
 against } sent, I order that all matters in difference [in this cause]
 C. D. } between the parties in this cause, [see 2 Chit. Ar. Pr. 1223,]
 be referred to the award, order, arbitration, final end and determination
 of A. A. esquire, barrister at law, so as he shall make and publish his
 award in writing, of and concerning the premises, ready to be delivered
 to the said parties, or such of them as shall require the same, [or to their
 respective personal representatives, if either of the said parties shall die
 before the making of the said award,] on or before the — day of —
 now next ensuing, or on or before such further or ulterior day as the said
 arbitrator shall from time to time indorse on this order. And by the like
 consent I further order that the said parties shall in all things abide by,
 perform, fulfil, and keep such award, so to be made as aforesaid; and
 that the costs of this action [and of the reference and award] shall abide
 the event of the said award, [or if the costs of the reference and award
 are not to abide the event of the suit, say "and that the costs of the
 reference and award shall be in the discretion of the said arbitrator."]
 And by the like consent, I further order that the said arbitrator shall be
 at liberty (if he shall think fit) to examine the said parties to this suit,
 and their respective witnesses, upon oath to be sworn before any judge
 of her majesty's court of Queen's Bench [or "C. P." or "Exch. of
 Pleas,"] or commissioner duly authorized, or before the said arbitrator;
 and that the said parties shall and do produce before the said arbitrator
 all books, deeds, papers and writings in their or either of their custody or
 power, touching or relating to the matters in difference. And I further
 order, by and with such consent as aforesaid, that neither the plaintiff
 nor the defendant shall bring or prosecute any action or suit at law or in
 equity against the said arbitrator, or bring any writ of error, or prefer any
 bill in equity against each other, of and concerning the matters so as afore-
 said referred; and that if either party shall by affected delay, or other-
 wise, wilfully prevent the said arbitrator from making an award, he shall
 pay such costs to the other as the court of our lady the queen before
 the queen herself [or if in C. P. say "before her majesty's justices of
 the Bench," or if in Exchequer, "before the barons of her majesty's
 Exchequer,"] shall think reasonable and just; and by the like consent I
 further order, that this order shall and may be made a rule of the said
 court, if the same court shall so please. Dated the — day of —,
 1840.

(Judge's or baron's signature.)

[See 2 Chit. Ar. Pr. 1220.]

9. *The like, more special, to several Arbitrators.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

— the — day of —, A. D. —.

As yet of — term, — Victoria.

A. B. } Upon hearing the attornies on both sides, and by their con-
 v. } sent, I do order, that all matters in difference [in this cause]
 C. D. } between the parties in this cause, be referred to the award,
 order, arbitrament, and determination of A. A. of —, and T. A. of
 —, and of such third person as the said A. A. and T. A. shall by a
 memorandum in writing under their hands, to be indorsed hereon, nomi-
 nate or appoint in this behalf, or of any two of them, so as they the said

A. A. and *T. A.* and such third person so to be nominated or appointed as aforesaid, or any two of them, shall and do make and publish their award in writing, under their hands, ready to be delivered to the said parties in difference, or either of them, if they or either of them shall require the same [or to their respective personal representatives, if either of the said parties shall die before the making of the said award,] on or before the — day of — next, or on or before such further or ulterior day as the said arbitrators, or any two of them, shall appoint and signify in writing under their hands, to be indorsed on these presents, and her majesty's court of Queen's Bench [or "C. P." or "Exch. of Pleas,"] or one of the judges [or "barons"] thereof, shall order: And, by the like consent, I do also order, that the said parties in difference shall and do respectively produce and leave with the said arbitrators, or as they or any two of them shall direct and appoint, all books, papers, writings, vouchers, or documents, in the custody, possession, or power of either of the said parties in difference, relating to the matters hereby to them referred, necessary in the judgment of the said arbitrators, or any two of them, for enabling them to judge and decide concerning the premises: and that the said arbitrators, or any two of them, shall be, and they are hereby empowered and authorized, if they or any two of them shall think fit, or if required by either of the said parties, to examine all or any person or persons produced as a witness or witnesses by either party, upon oath, or solemn affirmation if quakers, to be taken before a judge of her majesty's court of Queen's Bench, [or "C. P." or "Exchequer of Pleas,"] at Westminster, or a commissioner duly authorized, or before the said arbitrators or either of them: And also that the said arbitrators hereby appointed, or any two of them, shall be at liberty to proceed *ex parte*, in case of the non-attendance of either of the said parties in difference, or of their witnesses, after six days' previous notice in writing under the hands of the said arbitrators, or any two of them, given to the said parties in difference respectively, or left at his or their then last known respective place or places of abode, notifying the time and place of meeting, to proceed in the said reference: And, by the like consent, I do further order, that neither of the said parties in difference shall bring or prosecute any action or suit at law or in equity, nor file any bill or bills in equity against the other, or against the said arbitrators, or any of them, touching the matters hereby referred, or agreed to be referred as aforesaid; and that the costs of the action commenced against the said *C. D.* shall abide the event of the said award; and that the costs of the said reference, and the award to be made in pursuance thereof, and all other costs and charges incidental thereto, shall be in the discretion of the said arbitrators, [or if to abide the event, see ante, 660, No. 8,] who shall direct and award, by and to whom, and in what manner, the same shall be paid: And by the like consent I further order, that in case the said arbitrators shall make their award before the said — day of —, and in favour of the plaintiff, any sum or sums of money that may be found due to the plaintiff shall not be awarded to be paid before that day: And, by the like consent, I further order that this order shall and may be made a rule of her said majesty's court of Queen's Bench [or "C. P." or "Exch. of Pleas,"] at Westminster, if the same court shall so please. Dated the — day of —. A.D. —.

(Judge's or baron's signature.)

10. *Bond of Submission.*

Know all men by these presents, that I, *C. D.* of —, —, am held and firmly bound to *A. B.* of —, in £—, of good and lawful money

of Great Britain, to be paid to the said *A. B.* or his certain attorney, executors, administrators, or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal. Dated the — day of —, in the year of our Lord 1840.

Whereas certain differences have arisen between the said *A. B.* and the said *C. D.* respecting [*here state concisely the subject-matter in dispute, or if all matters in difference are referred, you had better not state such subject-matter at all*] and it is agreed by and between the said *A. B.* and the said *C. D.* to refer to *A. A.* and *T. A.* as arbitrators, as well the said differences, as also all and all manner of action or actions, cause and causes of action, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by and between the said parties, with liberty to the said arbitrators [pending the said reference] to appoint, choose, and name an umpire: Now the condition of this obligation is such, that if the above-bounden *C. D.*, his heirs, executors, or administrators, do and shall, on his or their part and behalf, in all things well and truly stand by, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, final end and determination of the said arbitrators, so as the said award be made in writing on or before the — day of — next [*or "on or before such other day not beyond the — day of — as the said arbitrators shall, by writing to be indorsed on these presents, from time to time appoint"*]; or if the said arbitrators do not make such their award by the time aforesaid, then if the said *C. D.*, his heirs, executors, or administrators, do and shall, upon his or their part and behalf, in all things well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, umpirage, final end and determination of the person so by the said arbitrators to be appointed, chosen, and named as umpire, as aforesaid, so as the said umpire do make his said award and umpirage in writing on or before the — day of — now next ensuing, then this obligation to be void, otherwise to remain in full force and virtue. And the said *C. D.* doth hereby consent and agree that this his submission shall or may be made a rule of her majesty's court of Queen's Bench [*or "Common Pleas," or "Exchequer of Pleas,"*] at Westminster, pursuant to the statute in such case made and provided. And it is further consented and agreed, that the witnesses upon the said reference shall be examined before the said arbitrator upon oath.

C. D. (L. s.)

Sealed and delivered (being first duly stamped) in the presence of *W. W.*

[*See 2 Chit. Ar. Pr. 1222.*]

11. *Agreement of Reference.*

Memorandum of an agreement made this — day of —, A.D. —, between *A. B.* of —, and *C. D.* of —. Whereas disputes and differences have arisen and are subsisting between the above-named parties [*or recite the particular disputes:*] Now therefore it is hereby agreed by and between the said parties to refer all disputes and differences whatsoever between them to the award and final determination of *A. A.* of —, and that they will respectively obey, observe, perform, fulfil, and keep the award of the said *A. A.* of and concerning the premises, so that the same be in writing and signed by him on or before the — day of — next

ensuing, with power for the said *A. A.* to enlarge the time for making his award from time to time as he shall think fit; and we the said parties do respectively agree that the witnesses upon the said reference shall be examined before the said arbitrator upon oath; and we the said parties do further respectively agree to produce all books, vouchers, accounts, and documents in our possession or power before the said arbitrator as he shall require, and do all other acts needful and necessary to enable the said *A. A.* to make a just award of and concerning the premises; And it is further agreed by and between the said parties, that the costs of this reference and of the said *A. A.*'s award shall be in his discretion [*or* "shall abide the event:"] And that these presents, and the submission thereby made of the said matters in difference to the award of the said *A. A.* shall be made a rule of her majesty's court of Queen's Bench, [*or* "C. P." *or* "Exch. of Pleas,"] pursuant to the statute in that case made and provided. Dated this — day of —, 1840.

A. B.
C. D.

12. *The like, in another form, when an Action is pending.*

Memorandum of an agreement made the — day of —, 1840, between us, the undersigned *S. P.* (as executrix of the last will and testament of *R. P.* deceased) of the one part, and *W. P.* of the other part.

Whereas an action is now depending in her majesty's court of Queen's Bench, wherein the said *S. P.* is the plaintiff, and the said *W. P.* the defendant. Now, in order to put an end to such action, to ascertain, settle, and adjust all accounts, claims, and demands in dispute in the said action, We have agreed, and in consideration of the premises do hereby agree, that all proceedings in the said action shall be stayed, and that the cause of such action, and all other claims and demands relating thereto, shall be forthwith referred to *W. B.* of —, and *J. K.* of —, or to an umpire to be appointed by such arbitrators, in case they do not agree to arbitrate, award, order, adjudge and determine of and concerning such action, and all claims and demands relating thereto, so as the award of the said arbitrators or umpire be made in writing, under their or his hand, and ready to be delivered to one of us, on or before the — day of — next: And we do agree, that the said arbitrators or umpire shall have full power to examine us and our witnesses on oath, or in such manner as they or he shall think proper, and that the said arbitrators or umpire shall have full power to call for the production of from the parties, and examine such books, papers, and writings, as he or they may respectively think necessary: that the said arbitrators or umpire shall respectively have full power from time to time, by any memorandum to be indorsed upon this agreement, and assigned by them or him, to enlarge the time for making their or his award, as often as he or they shall think necessary; and that he or they shall be at liberty to proceed *ex parte*, if either of us refuse or neglect to attend: And also that the said arbitrators shall have power to appoint the umpire by any memorandum to be indorsed upon this agreement, and signed by them: And we also agree, that the costs of the said action shall abide the event of the award, but that the costs of this agreement and of the said arbitration and award shall be in the discretion of the said arbitrators, or of the umpire, and who shall have full power to direct in the award by whom or which of us the same shall be paid, either wholly or in part: And we do also agree that each of us, and our respective executors and administrators, shall well and truly stand to, obey, abide, perform, fulfil, and keep the award of the said arbi-

trators or umpire, and that our submission and the said award shall be made a rule of her majesty's court of Queen's Bench, and that final judgment, or judgment as in case of a nonsuit in the same cause, shall be entered up for the plaintiff or defendant, as the said award shall direct.

13. *Appointment of third Person as additional Arbitrator, according to a Power contained in the Reference.*

We, the within-named *E. F.* and *G. H.* do, by this *memorandum* under our hands, made before we enter or proceed on the arbitration within mentioned, nominate and appoint Mr. *X. Y.* of — the third person or arbitrator, to whom, together with ourselves, all matters in difference between the said parties within mentioned shall be referred, according to the tenor and effect of the within [rule.] Witness our hands this — day of —, 1840.

E. F.
G. H.

14. *Judge's Order to revoke the Arbitrator's Authority, under 3 & 4 W. 4, c. 42, s. 39.*

B. v. D. } Upon hearing the attornies or agents on both
[or "In re } sides, and reading the affidavits of *C. C.* and *D. D.*,
A. B. and *C. D.*"] } I order that the said *A. B.*, the plaintiff [or "de-
fendant"] in this cause, shall be at liberty to revoke and make void the
power and authority of the arbitrator [or "umpire"] to make his award
[or "umpirage"] in the reference herein. Dated the — day of —,
1840. (Judge's signature.)

[See 2 *Chit. Ar. Pr.* 1225, 1226.]

15. *Jurat of Witnesses to be examined before Arbitrator, when they were sworn in Court or before a Judge (a).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

W. W. of —,

T. W. of —,

G. W. of —, &c.

A. B. against *C. D.*

On the — day of —, the above — witnesses were severally sworn in court [or "before me at my chambers in Rolls' Garden"] to give evidence before the arbitrator to whom this cause stands referred.

W. W.

T. W.

G. W. &c.

By the Court [or, if sworn before a judge,
the judge's signature.]

[See 2 *Chit. Ar. Pr.* 1227.]

(a) It seems that a commissioner for taking affidavits has no power to administer an oath to a witness for a

viva voce examination before an arbitrator. *Rex v. Hanks*, 3 C. & P. 419. [per Gaselee, J.]

16. *Memorandum for Jurat.*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Jurat for defendant.

C. D. defendant.

W. W. }
T. W. } Witnesses.
G. W. }

By rule of court [or "judge's order," or "baron's order," or "order of nisi prius"] dated —, 18—.

D. A. defendant's attorney.

[See 2 Chit. Ar. Pr. 1227.]

17. *Oath to be administered by Arbitrator to a Witness (a).*

You shall true answer make to all such questions as shall be asked of you by or before me, touching or relating to the matters in difference between A. B. and C. D. referred to my award [or "to the award of myself and G. H."], without favour or affection to either party; and therein you shall speak the truth, the whole truth, and nothing but the truth.

So help you God.

18. *Affidavit to obtain a Rule or Judge's Order for a Witness to attend before an Arbitrator and produce certain Documents, pursuant to 3 & 4 Will. 4, c. 42, sect. 40 (b).*

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant (b).

A. B. of — maketh oath and saith, that on [&c. *here state shortly the mode by which the cause or matters were referred, which if by an agreement may be thus:*] A. B. and C. D., by an agreement in writing signed by them respectively, agreed to submit certain matters in difference between them to the award of A. A. of —, to be made on or before the — day of — next, or such further day as he should appoint, and that by the said agreement it is agreed that the said submission to arbitration shall be made a rule of this honourable court. [*If the time has been enlarged, state the fact.*] And this deponent further saith, that the said A. A. hath taken the burthen of and is proceeding upon the reference, and that he hath made and signed an appointment for a meeting upon the said reference, a copy whereof signed by the said A. A. is herewith annexed, and is signed with the proper handwriting of the said arbitrator: And this deponent further saith, that W. W. of —, in the county of —, is now residing at — aforesaid, in the county of — aforesaid, [*or if he cannot be found, state the fact,*

(a) See 3 & 4 Will. 4, c. 42, s. 41. It is to be observed that the arbitrator may administer the oath, though the reference provide that it shall be administered by a judge or commissioner. *Hodsell v. Wise*, 4 M. & W. 536; 7 Dowl. 15, S.C.

(b) It seems that, in practice, this affidavit is not in general used, but in some cases, perhaps, a judge might require it, and therefore the form is

given. All that is in general required to be laid before the judge, before granting the order, is the certificate of the attorney who applies for it, as in the form, *post*, 666, No. 19, and the appointment of the arbitrator for the attendance before him, as in the form, *post*, 666, No. 20.

(b) As to the title of the affidavit, see 2 Chit. Ar. Pr. 1211.

to satisfy the court or judge of that fact], and that he this deponent is informed and verily believes that the said *W. W.* hath in his possession, custody, or power, an indenture [*&c. here fully describe the document required:*] And this deponent further saith, that he is informed and advised, and verily believes that the said *W. W.* hath been and is and will continue to be a material and necessary witness for him the said *A. B.* touching the matters so referred as aforesaid, and that it is and will be material and necessary that the said *W. W.* should attend and be examined and give evidence before the said arbitrator, and should produce in evidence the said document to and before the said arbitrator on the — day of — next, or on the day next following, and that he the said *W. W.* hath not any just reason for refusing to attend and be examined, or for refusing to produce and have the said document read in evidence aforesaid, and that he the said *A. B.* cannot safely proceed in the said arbitration without the evidence of the said *W. W.* and the production and reading of the said document by and before the said arbitrator. *A. B.*

Sworn [*&c. ante, 207.*]

19. *Certificate of the Attorney in the Cause for that purpose.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

Between *A. B.* plaintiff,
and

C. D. defendant.

I hereby certify that *J. P.* a clerk of Messrs. —, of —, is a material and necessary witness in the matter submitted to reference in this cause, and that it is necessary that he should attend at the chambers of *M. R.*, situate No. —, the arbitrator appointed in this cause, on — next, at — o'clock in the morning, at which time and place the arbitrator has appointed a meeting herein, and that he should produce to the said arbitrator, at the time and place aforesaid, a book &c. [*specify the documents as you would in a subpoena duces tecum.*] Dated —.

P. A. attorney for the above-named plaintiff.

20. *Appointment by Arbitrator for Attendance before him.*

B. } I appoint — the — day of — next, at — o'clock in
v. } the evening, at —, and —, the — day of — next, at —
D. } o'clock in the evening at the same place, for proceeding in this reference. [*If there has been or is intended to be a rule or order for the attendance of a witness &c. here say, "and I do hereby require you then and there to be sworn &c." proceed as in the above rule or order, mutatis mutandis.*] Dated the — day of —, A. D. 1840.

A. A.

To Messrs. *A. B.* and *C. D.*,
and their respective attor-
nies or agents, and all
others whom it may con-
cern.

(*The arbitrator's signature, or the
signature of one or more of them,
if more than one.*)

[*See 2 Chit. Ar. Pr. 1228.*]

21. *Peremptory Appointment for the same purpose.*

I appoint — the — day of — instant [or “next”], at — o’clock in the — noon precisely, at —, peremptorily to proceed upon and conclude the reference now pending before me between *A. B.* and *C. D.*: And I hereby give notice, that in case of non-attendance of either party, I shall nevertheless proceed, and immediately make my award, according to the statute in that case made and provided. Dated the — day of —, A. D. —.

To Messrs. *A. B.* and *C. D.*, and
their respective attornies or
agents, and all others whom it
may concern.

E. F. arbitrator.

22. *Judge’s Order for the Attendance of a Witness with Documents.*

Between *A. B.*
and
C. D. { Upon reading the affidavit of *A. B.* [and reading
the paper writing and appointment thereunto an-
nixed], [or “upon reading the certificate of *P. A.*
[or “In re *A. B.*
and
C. D.”] { plaintiff’s attorney herein,”] I do order that *W. W.*
of —, in the county of —, [or “who at pre-
sent cannot be found,”] do attend before *A. A.*
esquire, the arbitrator, to whom this cause [or “matter”] stands referred,
on — next, at — o’clock in the evening of that day, and also on —
next, at — o’clock in the evening of that day, at his chambers, situate
at —; and that the said *W. W.* do then and there submit to be duly
sworn and examined upon his oath by and before the said arbitrator as a
witness on the behalf of the plaintiff in the matter of the said reference,
and do also then and there duly answer such lawful questions as shall
then and there be put to him as such witness; and I do further order and
command the said *W. W.*, at the times and place aforesaid, to take with
him and produce and give evidence to and before the said arbitrator a cer-
tain indenture [&c. state the document as you would in a subpoena duces
tecum], in pursuance of the statute in that case made and provided, and
that the said *W. W.* fail not in the premises upon pain of his being
deemed to have been guilty of a contempt of the said court. Dated the
— day of —, A. D. 1840.

(Judge’s signature.)

[See 2 Chit. Ar. Pr. 1228, 1229.]

23. *Appointment of an Umpire.*

We, the within-named *A. A.* and *T. A.* do hereby nominate and ap-
point *U. U.* of —, to be umpire between us, in and concerning the mat-
ters in difference within referred, [on condition that he do within —
days from the date hereof, by some writing under his hand, accept the
umpirage.] Witness our hands this — day of —, A. D. —.

Witness *W. W.*

A. A.

T. A.

24. *Enlargement of Time for making Award.*

We, the undersigned arbitrators, by virtue of the power to us given for
this purpose, do hereby appoint, extend, and [if a second enlargement,
“further”] enlarge the time for making our award until the — day of

— next, on or before which said day our award in writing, of and concerning the matters in difference within-mentioned and referred to us, shall be made and published. In witness whereof we have set our hands [or “hands and seals”] this — day of —, A. D. —.

Witness, *W. W.*

A. A.
T. A.

25. *Enlargement of Time by the Parties.*

We the within-named *A. B.* and *C. D.* for ourselves severally and respectively, and for our several and respective heirs, executors and administrators, do hereby give, grant and allow unto the within-named arbitrators further time for making their award of and concerning the several matters within referred to them, until the — day of — next. In witness whereof we have hereunto set our hands [or if the submission was by bond or deed, say “our hands and seals,”] this — day of —, A. D. —.

Witness, *W. W.*

A. B.
C. D.

26. *Rule to enlarge the Time for making the Award.*

On — the — day of —, A. D. —.

A. B. } Upon reading the rule made in this cause, on —, and by
against } the consent of both parties, it is ordered, that the time limited
C. D. } for the arbitrator making his award between the parties be enlarged [or “further enlarged”] until —. Upon the motion of Mr. —.
By the Court.

[See 2 Chit. Ar. Pr. 1231.]

27. *Summons to obtain Enlargement of the Time for making the Award, under 3 & 4 Will. c. 42, s. 39.*

B. v. D. } Commence as usual, see ante, 654, No. 1,] to show
[or “In re } cause why the term limited for the arbitrator making
A. B. and C. D.”] } his award between the parties should not be enlarged
until —. Dated the — day of —, 1840.

[Judge's signature.]

[See 2 Chit. Ar. Pr. 1232.]

28. *Order thereon.*

B. v. D. } Upon hearing the attornies or agents on both
[or “In re } sides, and upon reading the affidavits of *C. C.* and
A. B. and C. D.”] } *D. D.*, I do order that the term limited for the
arbitrator making his award between the parties in this cause [or “matter”] be enlarged until — next. Dated the — day of — 1840.
[Judge's signature.]

29. *General Form of Award (a).*

To all to whom these presents shall come, I *A. A.* of — send greeting: [&c. proceed to recite the instrument which the parties referred to arbitration, and so much of its terms as may be essential to show the

(a) See various forms, 2 Chit. Gen. Pr., 2 ed. 111 to 114.

authority of the arbitrator or umpire with respect to the subject-matter of reference, and the time, power of enlargement, and manner of making the award. Thus, if it be by indenture, the recital may be thus: "Whereas by an indenture bearing &c. and made between &c., reciting that various differences had arisen &c." so stating all that may be material to warrant the following award, and then proceed thus:] Now know ye that I the said A. A. having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference and so referred as aforesaid, do make this my award in writing of and concerning the said matters in difference so referred, and do hereby award, order, determine, and direct that [&c. conclude with a distinct statement of the arbitrator's decision on all the points referred to him.]

Witness W. W.

[See 2 Chit. Ar. Pr. 1230, 1239, et seq.]

30. Award where the Submission was by Order of Nisi Prius, and a Verdict was taken subject to the Award.

To all to whom these presents shall come, I A. A. of — send greeting: Whereas by an order made at the sittings of nisi prius held at the Guildhall, Westminster, [or "London,"] in and for the county of Middlesex, [or "in and for the city of London,"] on the — day of —, A. D. —, before the right honourable the lord chief justice of our lady the queen, assigned to hold pleas before the queen herself, (or as the case may be, as in the order of reference,) in a certain cause wherein A. B. was plaintiff, and C. D. was defendant, it was ordered by the court, by and with the consent of the said parties, their counsel and attornies, amongst other things, that (let this agree with the order) the jury should find a verdict for the plaintiff with £— damages, and 40s. costs, subject to the award of me A. A. (of the Inner Temple, London, esquire,) to whom the said cause and all matters in difference (as in the order) between the said parties were thereby referred, so as I the said arbitrator should make and duly publish my award in writing of and concerning the matters referred, ready to be delivered to the said parties or to either of them who should require the same, on or before the — day of — next ensuing, or on or before any other day which I the said arbitrator should by any writing under my hand from time to time enlarge the time for making my award, and that the costs of the said cause should abide the event of the said award, and that the costs of the reference should be in the discretion of me the said arbitrator; [if the time was enlarged, say] And whereas I the said arbitrator did by an [or "two several"] indorsement on the said order, by writing under my hand, enlarge the time for making my said award until the — day of — instant. Now I the said A. A. having taken upon myself the burthen of the said reference, having examined upon oath all such witnesses as were produced before me by the said parties respectively, and having duly weighed and considered all the allegations, proofs and vouchers made and produced before me, do hereby award, order, and adjudge [here state the award, which, if in favour of the plaintiff, may be as follows: "that the said plaintiff had good cause of action against the said defendant in the said cause, and was and is entitled to a verdict therein: And I assess and award the damages to be paid by the said defendant to the said plaintiff in the said cause, at the sum of £—."] In witness whereof I have hereunto set my hand and seal, the — day of —, A. D. —.

31. *Award where the Submission was under Order of Nisi Prius at the Assizes.*

To all to whom these presents shall come, I *A. A.* of — send greeting: Whereas at the assizes holden at —, in and for the county of —, on — the — day of — last, before the honourable — one of the justices of our lady the queen, of the court of our lady the queen, before the queen herself, [*or “of the Court of Common Pleas,”*] and the honourable —, one of the barons of her majesty's Exchequer, and others their fellow justices assigned to take the assizes in and for the said county, on the trial of a cause wherein *A. B.* was plaintiff and *C. D.* defendant, it was then and there ordered by the court, by and with the consent of the said parties, their counsel and attornies, that [*let this agree with the order*] a verdict should be entered for the plaintiff for £— damages, subject to the award of the arbitrator thereafter named, and that it should be referred to the award, order, arbitrament, final end and determination of me *A. A.* of —, barrister at law, to settle all matters in difference between the parties, particularly [*&c. set out such parts of the order as bear upon the award.*] Now I the said *A. A.* having taken upon me the burthen [*&c. proceed as directed in the preceding form.*]

32. *Award where the Submission was by Judge's Order, that Plaintiff had no Cause of Action, &c.*

To all to whom these presents shall come, I *A. A.* of — send greeting: Whereas an action having been commenced in her majesty's court of —, in which *A. B.* was plaintiff and *C. D.* was the defendant, it was on the — day of — now last past, amongst other things, by an order in writing in that behalf, by sir —, knight, one of the justices [*or “barons”*] of the said court, by consent of all parties, ordered that all matters in difference (*as in order*) between the said parties should be referred to the award, order, arbitrament, final end and determination of me *A. A.* of the Inner Temple, barrister at law, so as I the said arbitrator should make and publish my award in writing ready to be delivered to the said parties or either of them requiring the same, on or before the — day of — then next ensuing, and by the same consent it was also ordered, that [*&c. setting out the order, or such part of it as bears upon the award.*] Now I the said *A. A.* having taken upon me burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference [*or “cause and premises,”*] so referred as aforesaid do make and publish this my award in writing of and concerning the said matters in difference [*or “cause and premises,”*] so referred, and do hereby award, order, determine, and direct [*that the said A. B. was not entitled to recover any thing in his said action, and that he had not at the time of the commencing of his said action, or at any time afterwards, any cause for that action against the said C. D.; and I do hereby further award, order, and adjudge that the said A. B. shall bear and pay his own costs and charges expended and incurred in the said action in and about this reference, and that he shall also pay the costs of the said C. D. by him about his defence to the said action in that behalf, and also in and about this reference expended, to be taxed by the master of the said court after one day's notice of taxation, and that the payment of such the said C. D.'s costs shall be made by the said A. B. to Messrs. J. and W.*]

on behalf of the said *C. D.*, at the office of Messrs. *J. and W.* at —, on the — day inclusive after such taxation, between the hours of — and — in the forenoon of that day; and I do further award, order and direct, that the costs of this award shall be borne and paid by the said *A. B.*, which said costs of the said award I do assess to the sum of £—.] In witness whereof I have hereunto set my hand and seal, the — day of —, A. D. —.

Witness *W. W.*

A. A.

33. *Award where the Submission was by a Judge's Order, reciting the Pleadings.*

To all to whom these presents shall come, I *A. A.* of — send greeting: Whereas an action was brought in the court of — at Westminster, wherein *A. B.* was plaintiff and *C. D.* was defendant, in which action the plaintiff declared [*&c. concisely reciting the substance of the declaration,*] and the said *C. D.* the defendant, pleaded to such action [*&c. set out concisely the tenor of the pleas, and the replication &c. also, if expedient;*] and whereas the said plaintiffs and defendant agree to refer the matters in dispute between them in the said action to my arbitrament and determination, and to leave the costs of the said action and reference to my discretion, so as I should make my award in writing under my hand, ready to be delivered to the said parties in difference, on the — day of — next; and it was also agreed between them, that upon the said arbitration the defendant should be entitled to and allowed the benefit and advantage of the several pleas before mentioned to be pleaded to the said action, especially the plea of [*&c. according to the fact*], in like manner and to the same extent as he would have been entitled thereto in case the said action had been regularly tried. Now know ye that I the said *A. A.* have taken upon myself the said reference, and having heard and examined all the evidence produced before me, and maturely weighed and considered the same matters so referred to me as aforesaid, do, in pursuance of the said reference, make and publish this my award in writing of and concerning the premises in manner following; that is to say, I do award [*&c. proceed in setting out the award.*]

34. *Award where the Submission was by mutual Bonds.*

To all to whom these presents shall come, I *A. A.* of — send greeting: Whereas on —, by a bond made and sealed with the seal of *C. D.* of —, he became held and firmly bound unto *A. B.* of — in the penal sum of £—: And whereas on the day and year aforesaid the said *A. B.*, by another bond sealed with his seal, became held and firmly bound unto the said *C. D.* in the like penal sum, with conditions written under the said several bonds that the said *A. B.*, his heirs, executors, and administrators, and the said *C. D.*, his heirs, executors, and administrators, should well and truly stand to, abide by, perform, fulfil, and keep the award, order, and final end and determination of me *A. A.*, an arbitrator indifferently named and elected, as well on the part and behalf of the above-bounden *A. B.* as of the above-bounden *C. D.*, to arbitrate, award, order, judge, and determine of and concerning [*&c. here set out such parts of the bond as bear upon the award, and state the enlargement, if any, as ante, 669.*] Now I the said *A. A.* having taken upon myself the burthen of the said arbitration, and having heard and duly and maturely weighed and considered the several allegations, vouchers, and

proofs in difference respectively, do in pursuance of the said submission make and publish this my award of and concerning the said premises in manner following; that is to say, I do award [&c. *here set out the award.*]

35. *Award where the Submission was by Agreement, and stating an Assent for an Enlargement.*

To all to whom these presents shall come, we *A. A.* and *T. A.* of — send greeting: Whereas on — by a certain agreement in writing under the hands [and seals] of *A. B.* of —, and *C. D.* of —, bearing date on or about the — day of — last, reciting that [&c. *here set out the recital and such parts of the agreement as bear upon the award:*] And whereas by an indorsement on the said agreement, bearing date on or about the — day of — last past, and under the hands of all the said parties to the said agreement, they the said parties mutually and reciprocally consented and agreed that the time for the said arbitrator's making the said award should be enlarged to the — day of — then next, and that they would in all other respects abide by the terms of the said agreement. Now know ye that we the said arbitrators having taken upon us the burthen of the said reference, and having examined all such witnesses as were produced before us by the said parties respectively, and having fully weighed and considered all the allegations, proofs, and vouchers made and produced before us, do award, order, and adjudge that [&c. *set out award.*]

36. *Award or Submission by Bond, that one Party shall pay a Sum of Money to the other and release Claims.*

I do award, arbitrate, and determine, that the said *C. D.*, his executors or administrators, shall and do well and truly pay or cause to be paid to the said *A. B.*, his executors or administrators, on the — day of — next ensuing, between the hours of — and — of the clock of the same day, at the chambers or office of Messrs. —, in the Middle Temple, London, the sum of £— of lawful money of Great Britain. And I do further award, arbitrate, and direct, that upon payment of the said sum of £— to the said *A. B.* as aforesaid, they the said *A. B.* and *C. D.* shall and do respectively, at the costs and charges of the party requiring the same, sign, seal, and as their respective acts and deeds deliver each unto the other of them mutual general releases in writing of all and all manner of action and actions, cause and causes of action, bills, bonds, covenants, debts, rents, specialties, controversies, claims and demands whatsoever, from the beginning of the world until the day of the date of the aforesaid obligations. In witness whereof I the said *A. A.*, the arbitrator aforesaid, have hereunto set my hand the — day of —, A. D. —.

Witness *W. W.*

A. A.

37. *Award that each Party, if required, shall execute a Release.*

And I do further award, order, and direct, that after payment of the said sum and the costs of the said action to the said *C. D.* each of the parties, if required so to do, shall, at the costs and charges of the other of them, execute to the other of them a release of the matters so referred to me as aforesaid.

38. Award that the Plaintiff had cause of Action (a).

I do award, order, and determine that the said *A. B.* had good cause of action against the said *C. D.*, as stated in the declaration in this action so referred to me as aforesaid, [and was and is entitled to a verdict therein,] and I assess and award the damages to be paid by the said defendant to the said plaintiff in the said action at the sum of £——.

39. Award of Verdict on several Issues and new Assignment in Trespass.

I do award, order and determine, as to the first issue joined between the parties, that the defendant is not guilty of the trespasses in the declaration in the action laid to his charge, except as hereinafter mentioned; and as to the second issue I do find for the defendant that he did not of his own wrong, but for such cause as the defendant hath in his plea alleged, assault, beat, bruise, wound, or illtreat the said plaintiff, as he the said plaintiff has stated; and as to the last issue joined between the parties, I do award, determine, and find that the defendant is guilty of the trespasses newly assigned, and I do assess the damage of the said plaintiff, on account of the trespasses newly assigned, over and above his costs and charges, to one shilling.

40. Award of Verdict for the Plaintiff, reducing the Damages.

I do award, order, and adjudge that the verdict already entered up for the plaintiff shall stand, but that the damages be reduced to £——.

41. An Award of Costs of Action assessed by the Arbitrator to be held by one Party, and of the Costs of the Reference in equal Moieties.

I do award that the costs of the said action, which costs I find to amount to the sum of £——, be paid by the said *A. B.* to the said *C. D.* on the —— day of —— next ensuing the date of this my award, at the office of Messrs. ——, in the Inner Temple; and I do further award, order, and adjudge, that one moiety of the costs of this my reference and award shall be paid by the said *A. B.* and the other moiety thereof by the said *C. D.*; which said costs of this reference I do assess to amount to the sum of £——.

42. Award that each Party shall pay his own Costs, and that one shall pay the Costs of the Reference, and that the other shall afterwards pay him Half thereof.

And I do further award, order, and determine, that each of them the said *A. B.* and *C. D.* shall bear and pay his own costs incurred by him in and about the said submission and reference, and that the sum of £——, being the amount of the other costs attending the said submission and reference, and of the making of this award, shall be paid by the said *A. B.* to me *A. A.* upon demand, and that the sum of £——, being one moiety of the said sum of £——, shall, after such aforesaid payment by the said *A. B.*, be paid by the said *C. D.* to the said *A. B.* upon demand.

(a) See form of award that plaintiff had no cause of action, ante, 670.

43. Award under a Judges' Order after Issue joined, finding in favour of the Defendant upon an Issue which went to the whole Action.

To all to whom these presents shall come, I, W. C. of —, barrister-at-law, send greeting: Whereas an action having been commenced in her majesty's court of —, in which A. B. was plaintiff, and C. D. was the defendant, it was on the — day of —, now last past, by an order in writing made by the ["Right Honourable James Lord Abinger, the Lord Chief Baron of the said court"], by consent of both parties, ordered that all matters in difference in the said cause should be referred to the award of me the said W. C., so as I should make and publish my award in writing under my hand, of and concerning the matters referred, ready to be delivered to the said parties in difference, or such of them as should require the same, or to their respective personal representatives, if either of the said parties should die before the making of the said award, on or before the — day of —, then next ensuing, or on or before such further or ulterior day as the said arbitrator should appoint and signify in writing under his hand to be indorsed on the said order, and by the like consent it was also ordered that the said parties should in all things abide by, perform, fulfil, and keep such award so to be made as aforesaid, and that the costs of the said suit, and the costs of the reference and award, should abide the event of the said award: And whereas I, the said arbitrator, did by four several indorsements on the said order, by writing under my hand, duly enlarge the time for making my said award to the several days therein respectively mentioned, and until the — day of —, next: Now I, the said W. C., having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference in the said cause, so referred as aforesaid, do make and publish this my award in writing, of and concerning the said matters in difference in the said cause so referred, and do find the first issue joined between the said parties in the said cause for the said plaintiff; and do award, order, and determine as to that issue, that as to the first and last counts of the declaration in the said cause, except as to the sum of 14s., parcel of the money in the first count of the said declaration mentioned, the said defendant did promise in manner and form as the said plaintiff hath in these counts complained against him (a); and I do hereby find the second issue joined between the said parties in the said cause for the said defendant, and I do award, order, and determine as to that issue, that the said defendant paid to the said plaintiff, and the said plaintiff accepted and received of and from the said defendant the monies in the second plea of the said defendant in the said cause in that behalf mentioned, in full satisfaction and discharge of the causes of action in the introductory part of that plea mentioned, and as to which that plea was pleaded, and of all damages in respect thereof as in that plea alleged: I do further award, order, and determine that the said plaintiff had not at the time of the commencement of the said action, or since, any cause of action against the said defendant in respect of the matters in difference so referred to me as aforesaid. In witness whereof I have hereunto set my hand and seal the — day of —, A.D. —.

Witness —.

(a) The defendant pleaded a payment into court as to the 14s., and plaintiff replied taking it out in satisfaction of that sum.

44. *Certificate of Amount of Damages instead of Award.*

In the Queen's Bench.

A. B. against C. D.

Having heard, examined, and considered the allegations and proofs of both the said parties, I hereby certify, that the damages sustained by the plaintiff amount to the sum of £——, for which sum I direct a verdict to be entered, together with his costs of this action. As witness my hand this —— day of ——, 1840.

To ——, esquire (*judge's marshal.*)

E. F. arbitrator.

45. *Rule making an Order of Nisi Prius a Rule of Court.*

It is ordered, that an order made at the sittings of nisi prius holden at —— on ——, before [*describe the sitting of nisi prius according to the fact, as ante*], be entered and made a rule of this court; which said order is in the words and figures following, to wit, [*here set out the whole of the order verbatim.*] Upon the motion of Mr. G.

By the Court.

[*See 2 Chit. Ar. Pr. 1256.*]

46. *Rule, making Judge's Order of Reference, &c. a Rule of Court.*

—— term, — Victoria.

A. B. } It is ordered, that an order made by (name of chief justice, or
v. } other judge or baron) the lord chief justice [or "lord chief baron,"
C. D. } or "a judge of this court," or "baron of this court"] at his
chambers in Rolls' Garden, bearing date the —— day of —— last past
[or "instant"], be entered and made a rule of this court; which said
order is in the words following, to wit, [&c. set out the whole of the order
verbatim.] Upon the motion of Mr. ——. Dated the —— day of ——,
A.D. ——.

By the Court.

[*See 2 Chit. Ar. Pr. 1256.*]

47. *Rule, making a Bond or Agreement of Reference a Rule of Court.*

On the —— day of ——, A.D. ——.

A. B. } Upon reading the affidavit of W. W. and also the bond and
v. } condition thereof thereunder written, executed by the said C. D.
C. D. } the tenor of which said bond and condition is in the words and
figures following; that is to say, Know all men [&c. to the end of the bond
and condition:] Now upon reading the bond and condition aforesaid, it
is ordered that the said bond and the condition thereof, and the submis-
sion between the said parties in the said condition mentioned, be and the
same is hereby made a rule of this court, pursuant to the statute in such
case made and provided. Upon the motion of Mr. ——.

By the Court.

48. *Affidavit of Execution of a Bond of Submission.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

W. W. clerk to P. A. of ——, gentleman, attorney for A. B. in the
annexed bond or obligation mentioned, maketh oath and saith, that on

the — day of —, A.D. —, this deponent was present and did then see *C. D.* duly execute the bond or obligation hereunto annexed, and that the said *C. D.* did then sign, seal, and as his act and deed deliver the said bond or obligation in the presence of this deponent, and that the name *C. D.* at the foot thereof is of the proper handwriting of the said *C. D.*, and that the name *W. W.* subscribed to the said bond or obligation, as the witness thereof, is of the proper handwriting of this deponent.

Sworn [&c. *see ante*, 207.]

W. W.

[*See 2 Chit. Ar. Pr.* 1256.]

49. *Affidavit of Execution of Award.*

In the Q. B. [*or* "C. P." *or* "Exch."]

Between (a) $\left\{ \begin{array}{l} A. B. \text{ plaintiff} \\ \text{and} \\ C. D. \text{ defendant.} \end{array} \right.$

W. W. of —, butcher, maketh oath and saith, that he this deponent did, on the — day of —, A.D. 18—, see *A. A.* sign, seal, publish, and declare his award and arbitrament, in writing, between *A. B.* of — and *C. D.* of —, bearing date the same day and year aforesaid: And this deponent further saith, that the name *A. A.*, set and subscribed to the said award as the party executing the same, is of the proper handwriting of the said *A. A.*, and that the names *W. W.* and *Y. Y.*, set and subscribed thereto as witnesses attesting the execution of the said award, are of the respective handwriting of this deponent and the said *Y. Y.*,

Sworn [&c. *see ante*, 207.]

W. W.

50. *Affidavit of Demand and Refusal, to ground Attachment.*

In the Q. B. [*or* "C. P." *or* "Exch.."]

Between (a) $\left\{ \begin{array}{l} A. B. \text{ plaintiff} \\ \text{and} \\ C. D. \text{ defendant.} \end{array} \right.$

A. B. of —, maketh oath and saith, that he this deponent did, on the — day of — last, personally attend, from the hour of — until the hour of — in the forenoon of the same day, at (the time and place mentioned in the award), for the purpose of receiving the sum of £— awarded to this deponent, pursuant to a certain award in writing, which is hereunto annexed; but the said *C. D.* did not attend at the time and place aforesaid, or pay to this deponent the said sum of £—, or any part thereof: And this deponent further saith, that on — next after —, in this present — term, the submission of this deponent and the said *C. D.* to the said award contained in a certain bond or obligation bearing date the — day of —, 18—, was made a rule or order of this honourable court, and that he this deponent did, on the — day of — last, personally serve the said *C. D.* with a true copy of the said rule or order and award, and at the same time shewed him the said original rule or order and award, and demanded of him the payment of the said sum of £— so awarded to this deponent as aforesaid, but the said *C. D.* did not then, or at any time afterwards, pay the same, or any part

(a) If there is no cause in court, omit this title in a cause. In *Doe v. Stillwell*, 6 Dowl. 305, it was held, that the affidavit of the execution of a

power of attorney to demand the performance of an award must be entitled in the cause,

thereof, to this deponent, and the said sum of £—— now remains wholly due and owing to this deponent.

In the case of an enlargement of the time for making the award, add this:] And this deponent further saith, that the time for making the said award was duly enlarged to the —— day of —— last, as appears by an indorsement [*or “by —— several indorsements”*] on the said bond or obligation, and as he this deponent verily believes, and that the said award was made within the time limited for making the same: And this deponent further saith, that at the time of demanding payment of the said sum of £——, the said C. D. had notice that the time for making the said award had been so enlarged, and that the said award was so made as aforesaid.

Sworn [*&c. ante, 207.*]

A. B.

51. *The like of the Sum awarded, and taxed Costs.*

In the Q. B. [*or “C. P.” or “Exch.”*]

Between (a) $\left\{ \begin{array}{l} \text{A. B. plaintiff} \\ \text{and} \\ \text{C. D. defendant.} \end{array} \right.$

A. B. of ——, the plaintiff in this cause, maketh oath and saith, that he this deponent did, on the —— day of —— last, personally serve the above-named defendant with a true copy of the rule and *allocatur*, and also a true copy of the award hereunto annexed, and at the same time shewed him the said original rule, *allocatur*, and award, and demanded of him the payment of the sum of £——, awarded to this deponent by E. F. of ——, the arbitrator named in the said award, and also the payment of the sum of £——, for the costs allowed to him this deponent in the said cause, but the said defendant refused to pay the same, or any part thereof, and the said sums of £—— and £—— still remain wholly due and owing from him the said defendant to this deponent.

52. *Rule Nisi thereon.*

—— term, — Victoria.

A. B. } Upon reading a rule made in this cause on ——, and the master's *allocatur* thereon, the award of A. A. esq. and the affidavit C. D. } of P. A., it is ordered, that the defendant, upon notice of this rule to be given to him, shall upon —— next show cause why an attachment of contempt should not be issued against him for non-payment of £—— awarded to be paid by him to the plaintiff or his attorney, and also for non-payment of £——, the plaintiff's costs in this cause, [*or “the plaintiff's costs incurred in and about the said arbitration”*] in pursuance of the master's *allocatur* aforesaid. Upon the motion of Mr. James.

By the Court.

[*See 2 Chit. Ar. Pr. 1258.*]

53. *Attachment.*

[*See the forms, post, 678.*]

(a) See the note in the preceding page.

BOOK IV.

PART II.

ATTACHMENT.

1. *Against Sheriff for not returning Writ, or bringing in the Body.*
[Forms as to, ante, 235 to 239.]
-

2. *Against a Witness for not obeying a Subpœna.*
[See 1 Chit. Ar. Pr. 234.]
-

3. *For Non-performance of an Award.*
[Forms as to, ante, 675 to 677.]
-

4. *For Non-payment of Costs.*
[Form as to, ante, 632 ; see 2 Chit. Ar. Pr. 1264, 1265.]
-

5. *For Contempt generally.*
[See 2 Chit. Ar. Pr. 1263.]
-

6. *Attachment for Contempt against an Attorney in the Queen's Bench or Exchequer.*

Victoria [&c. ante, 170, No. 47,] to the sheriff of ———, greeting : We command you, that you do not forbear by reason of any liberty in your bailiwick, but that you attach *A. A.* gentleman, one of the attornies of our court before us [*or if in Exch.* “before our barons of our Exchequer”] at Westminster, so that you may have him before us [*or if in Exch.* “before the barons of our Exchequer”] at Westminster, on ——— to answer to us for certain trespasses and contempts brought against him in our court before us [*or if in Exch.* “before the barons of our Exchequer”] at Westminster, and have you there then this writ. Witness ——— (*name of chief justice, or in Exch. of chief baron*), at Westminster, the ——— day of ———, in the year of our Lord ———.

7. *The like, in Common Pleas.*

Victoria [&c. as ante, 170, No. 47,] to the sheriff of ———, greeting : Attach *A. A.* gentleman, one of the attornies of our court of Common

Bench, so that you have him before our justices at Westminster, on —, to answer to us of and concerning those things which shall then on our behalf be objected against him; and have you there then this writ. Witness — (*name of chief justice*), at Westminster, the — day of —, in the year of our Lord —.

8. *Interrogatories thereon.*

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

— term, in the — year of the reign of Queen Victoria.

A. B. } Interrogatories to be administered to C. D. of —, gen-
 v. } tleman, one of the attornies of the court of our lady the now
 C. D. } queen before the queen herself, [*or in C. P. "of the Bench*
 gent. one } *at Westminster," or in Exch. "of the Exchequer of Pleas at*
 &c. } *Westminster,"*] touching and concerning a contempt sup-
 posed to be by him committed against the said court. [*Here insert such*
interrogatories as are adapted to the case, concluding with the jurat as
follows:]

The above-named C. D. was sworn, the — day of —, 1840, true answer to make to such questions as should be asked him, on his examination on the above interrogatories, before me, at my chambers in Rolls' Garden.

[*See 2 Chit. Ar. Pr. 1271.*] ,

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